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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 293

FIRST NATIONAL BANK OF SHREVEPORT, ET AL.,

vs.

LOUISIANA TAX COMMISSION, ET AL.

BRIEF FOR APPELLEES IN SUPPORT OF MOTION TO DISMISS APPEAL.

G. L. PORTERIE,
R. J. O'NEAL,
A. M. PYBURN,
H. C. WALKER, JR.,
LEON O'QUIN,
ELIAS GOLDSTEIN,
Attorneys for Appellees.

Montgomery-Andrews Printing Co., Inc., 419-23 Charlotte, N. O., La.

SUPREME COURT OF THE UNITED STATES

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No. 293

FIRST NATIONAL BANK OF SHREVEPORT, ET AL.,

versus

LOUISIANA TAX COMMISSION, ET AL.

BRIEF FOR APPELLEES IN SUPPORT OF MOTION TO DISMISS APPEAL.

On February 4th, 1931, the First National Bank of Shreveport, Louisiana, filed in the First Judicial District Court in and for Caddo Parish, Louisiana, a suit against the Louisiana Tax Commission, the Policy Jury of Caddo Parish, Louisiana, John W. A. Jeter, Assessor of Caddo Parish, Louisiana, T. R. Hughes, Sheriff and Ex-officio Tax Collector for the Parish of Caddo and the City of Shreveport, Louisiana, this suit being numbered 56,012 on the docket of the First Judicial District Court. On February 17th, 1931, the Commercial National Bank of Shreveport, Louisiana, filed a similar suit against the same defendants, being numbered 56,115 on the docket of the First Judicial

District Court. On February 19th, 1931, the American National Bank of Shreveport, Louisiana, filed a similar suit against the same defendants, being numbered 56,125. Answers were filed in due course and on April 21st, 1931, the attorneys for the plaintiff in the case of the American National Bank filed in the district court a motion reading as follows:

> "Now comes the American National Bank, plaintiff in the foregoing numbered and entitled cause, and with respect shows that there are now pending in this Honorable Court, two other suits of like nature, that of the First National Bank vs T. R. Hughes, Sheriff, et al. #56,012, and that of the Commercial National Bank vs Louisiana Tax Commission, et al., #56,115.
>
> "Mover now shows that the said three proceedings present identical issues of law, and that the facts adduced in one case will likewise be applicable to all of the other cases, except, perhaps, as to certain minor and wholly unimportant details.
>
> "Mover now shows that much expense and duplication of time and effort will be saved by the consolidation of these cases for the purpose of trial, and that under the rules of this Court and the Code of Practice of this state, it is entitled to have said cases consolidated for such purpose.
>
> "Shows that the case of the Commercial National Bank vs Louisiana Tax Commission, et al, above mentioned, has been fixed before his Honor, Judge E. P. Mills, for trial on Tuesday, April 28th, and that mover desires to have this case, and that of the First National Bank vs T. R. Hughes, Sheriff, et al, fixed for trial on said date, and said cases as aforesaid consolidated for the purpose of trial before the same Division of this Court.

"Wherefore, prays for an order herein consolidating the said three cases for the purpose of trial, and ordering that all of the cases be fixed for trial before the same Division of this Honorable Court as above set out.

"Prays for all orders and decrees necessary, and for full and equitable relief in the premises."

This motion was concurred in by the attorneys for the plaintiffs and defendants in the other cases and was granted, the cases being consolidated on April 22nd, 1931. The consolidation, however, was regarded by the court and by the parties as being only a consolidation for the purpose of trial, the three suits being in all respects individual and separate.

A clear exemplification of this is the fact that after the case was tried in April and May, 1931, three separate petitions for ancillary injunctions were filed, one in each case. The First National Bank on June 1st, 1931, filed a petition for the issuance of an injunction in suit No. 56,012, to prevent the collection of the tax in contest by the seizure and sale of its property. The court issued the injunction on June 5th, 1931. (Record pp. .....). On June 4th, 1931, the Commercial National Bank filed a similar petition in suit No. 56,115; and on June 5th the order for injunction was issued in its case. (Record pp. .....). On June 1st, 1931, the American National Bank filed its petition in suit No. 56,125 for an injunction; and the injunction issued on June 5th, 1931. (Record pp. .....).

Following the opinion of the district court a separate judgment was signed in each suit. (Record pp. .....).

In accordance with the Louisiana practice counsel for defendants on Saturday, September 26th, 1931, obtained orders in open court for suspensive and devolutive appeals to the Supreme Court of Louisiana.

While a single transcript of appeal was prepared and filed in the Supreme Court, it will be noted from the first page of the transcript that it covers the records in the three cases, each being given its proper number and title in the district court.

Similarly, in the Supreme Court of Louisiana, while a single opinion was handed down disposing of the three suits, the judgment of the court was:

"the judgments appealed from are reversed."

We have here then this situation: Three separate suits were filed by three plaintiffs, no one of which had any financial interest in the outcome of the suit filed by the other; these suits all involved the same questions of law and of fact and were, therefore, as a matter of convenience to the parties and to the court tried together, but consolidated for that purpose only.

Subsequently an ancillary writ of injunction was obtained by the plaintiff in each case and upon the conclusion of the trial and after the argument of the cases three separate judgments were signed, one in each case. From these judgments appeals were taken to the Supreme Court of Louisiana, which court disposed of the three cases in a single opinion by reversing the judgment in each of the three cases.

The net result of the judicial proceedings which we have described is that in accordance with the mandate of the Supreme Court of Louisiana there is **in each case** a judgment final in so far as the state courts are concerned, rejecting the demands of the plaintiff and dismissing its suit. It would therefore seem clear that the petitioners cannot disregard the fact that each one of them has no financial interest in the outcome of the other suits and cannot jointly prosecute a single appeal covering all three suits. It is impossible to get away from the fact that here are three separate judgments, rendered in three suits which, except for the agreement to consolidate for the limited purpose of trial only, would have had no connection or relation with each other. If any one of the three petitioners had alone chosen to appeal to this court, clearly the evidence relating only to the business and situation of the other petitioners would have been immaterial and irrelevant for the purposes of the appeal and would have been properly eliminated from the transcript of appeal.

No authority will be found either in the rules of this court or in the former practice of the King's Bench or Chancery in England or in the general common law practice of the state courts of last resort for bringing before this court for review by a single appeal three separate judgments rendered in three separate cases, which cases were never consolidated in the true sense, but were consolidated for purposes of trial only in the court of original jurisdiction.

The general rule is thus stated in *2 R.C.L., Title APPEAL AND ERROR, paragraph 79:*

> "It is well settled that separate causes cannot, as a general rule, be brought up for review by a sin-

gle appeal or writ of error, where there has been no true consolidation in the trial court. It is also settled that where separate causes have been tried together by the consent or agreement of the parties, or consolidated and tried together by order of court, and separate judgments have been rendered, a single appeal or writ of error is not sufficient to review such judgments. And the rule which forbids the review of separate causes on a single appeal or writ of error cannot be obviated by any stipulation between the parties; for it is manifest that the stipulation is not equivalent to a statutory consolidation, for the reason that when statutory consolidation is resorted to, only one judgment is rendered and all questions for review affect the one judgment; and to encourage such stipulations would be to unbridle litigants in the virtual establishment of rules of procedure in the appellate court, and the utmost confusion would result from such a practice. Where several causes are consolidated and a single judgment is rendered, such judgment may be reviewed on a single appeal or writ of error."

In *3 Corpus Juris, APPEAL AND ERROR, paragraph 108*, the rule is flatly stated to be:

> "Two separate and distinct causes, which have not been consolidated in the trial court otherwise than for convenience in trying them, cannot be brought up for appellate review by one appeal, or by one writ of error."

In the case of *Mobile Improvement & Building Company v. Stein, 158 Ala. 113, 48 So., 368*, the Supreme Court of Alabama dismissed an appeal for this reason under conditions which to our mind more nearly justified the taking of a single appeal than those in the present case. In the cited case there were six cases **between the same parties,**

the plaintiff and defendant in each case being the same. It was formally agreed by the attorneys in open court that all of the cases should be tried at the same time before the same jury; that the jury should render a separate verdict in each case; that all exceptions taken as far as practicable should be considered as taken in each case; and that in event of a similar verdict being rendered in all of the cases, the losing party might take all of the cases to the Supreme Court in one transcript and on one bill of exceptions, so that all questions liable to arise should be settled as far as possible on one appeal. The plaintiff lost, took one appeal, in which he sought to have reviewed the six judgments. Motion to dismiss by the appellee was sustained both as a matter of precedent and as a matter of proper practice. After stating that:

> "Elliott, in his work on Appellate Procedure, at *section 197*, says:
>
> 'The rule that a transcript must cover one case and be complete in itself forbids that several cases should be included in the same transcript.
>
> Rich v. Starbuck, 45 Ind. 310;
> Roach v. Baker, 145 Ind. 330, 43 N. E. 932, 44 N. E. 303;
> Harris v. Harris, 2 R. I. 538;
> Hollohan v. M'Lean, I. W. N. C. (Pa.) 262.'

the Court said:

> "On the foregoing authorities and considerations, it seems that the contention of the appellee should prevail and the appeal be dismissed. This would be perfectly clear, but for the recitals in the bill of exceptions in respect to the agreement of counsel. The question then is: Can the general rule that two or more distinct causes cannot be presented for review in a single transcript be obviated or set aside

by such an agreement? We think not. First, it is manifest that the agreement is not equivalent to statutory consolidation, for the reason that, when statutory consolidation is resorted to, only one judgment is rendered, and all questions presented for review or appeal relate to the one judgment; second, to encourage such agreements would be to unbridle litigants in the virtual establishment of rules of procedure in this court, and it may be readily seen that utmost confusion might follow such a practice. This may be readily demonstrated by an inspection of the present record. Other good reasons might be assigned for our conclusions, but we forbear."

In the note following the decision of this case in *17 American and English Annotated Cases, 289*, the statement is made that:

"It is a well-settled general rule that separate causes cannot be brought up for review by a single appeal or writ of error where there has been no true consolidation of the cause in the trial court.

United States: Brown v. Spofford, 95 U. S. 474, 24 U. S. (L. ed.) 508;

Alabama: De Sylva v. Henry, 4 Stew. & P. 409; Scranton v. Ballard, 64 Ala. 402; Kelly v. Deegan, 111 Ala. 152, 20 So. 378. See also Smith v. Hearne, 2 Stew. & P. 81.

Colorado: Vance v. Maroney, 3 Colo. 293.

Georgia: Bates v. Harris, 112 Ga. 32, 37 S. E. 105.

Illinois: Kennedy v. Court of Honor, 234 Ill. 43, 84 N. E. 702, explaining Hall v. Royal Neighbors of America, 231 Ill. 185, 83 N. E. 145.

Indiana: Rich v. Starbuck, 45 Ind. 310.

Kansas: See Prinz v. Moses, 66 Pac. 1009.

Michigan: Harris v. Sweetland, 48 Mich. 110, 11 N. W. 830.

Nevada: Griswold v. Bender, 27 Nev. 369, 75 Pac. 161.

New York: O'Gorman v. New York, etc. R. Co., 96 App. 594, 89 N. Y. S. 589; Tuffey v. Brooklyn Union Gas Co., 102 App. Div. 416, 92 N. Y. S. 489.

Ohio: See Chapman Mfg. Co. v. Taylor, 61 Ohio St. 394, 55 N. E. 1003.

Pennsylvania: Hollohan v. M'Lean, 1 W. N. C. 262; Cauley v. Pittsburg, etc. R. Co., 95 Pa. St. 398, 40 Am. Rep. 664; Stout v. Quinn, 9 Pa. Super. Ct. 179, 43 W. N. C. 418; Pottsville Bank v. Cake, 12 Pa. Super. Ct. 61; Com. v. Schollenberger, 17 Pa. Super. Ct. 218; Kimmel v. Johnson, 18 Pa. Super. Ct. 429; McCosh v. Myers, 25 Pa. Super. Ct. 61. See also Adamson's Appeal, 110 Pa. St. 459, 1 Atl. 327; Charles D. Kaier Co. v. O'Brien, 202 Pa. St. 153, 51 Atl. 760.

Rhode Island: Harris v. Harris, 2 R. I. C. 178.

Texas: Moore v. Harris, 1 Tex. 36; Renn v. Samos, 42 Tex. 104.

Virginia: See Ayers v. Lewellin, 3 Leigh, 609.

Washington: O'Conner v. Force, 108 Pac. 454.

Wisconsin: White v. Appleton, 14 Wis. 190; Bragg v. Blewett, 99 Wis. 348; 74 N. W. 807; See also Ballon v. Chicago, etc., R. Co., 53 Wis. 150, 10 N. W. 87.

Canada: See Bodi v. Crow's Nest Pass Coal Co., 9 British Columbia 332."

In the present instance, as we have heretofore pointed out, by agreement of counsel a motion was presented to the district court suggesting the consolidation of these three cases for purposes of trial on the ground that the same questions of law and of fact were presented in each case and that the time of the court and of the counsel would be conserved by trying the cases together rather than

separately. The cases were not consolidated for any other purpose than that of trial; and while the district judge disposed of them in a single opinion, as did the Supreme Court of Louisiana, separate judgment were rendered and signed by the district court in each case; and the decree of the Supreme Court of Louisiana expressly reversed the judgment in each case.

If the appeal to this Court were taken from the opinion of the Supreme Court of Louisiana and not from its judgment or decree, it might be argued that a single appeal and a single transcript is justified; but since the appeal to this Court is necessarily from the decree of the Supreme Court of Louisiana in each case, which decree reversed the judgment of the lower court in each case, it follows that there being three separate judgments, any one of which might be affirmed or reversed without affecting the rights of the parties in the other cases, the procedure which the appellants are required to follow is to appeal in each case and then if they desire consolidation, to obtain from this court an order for the consolidation of the three cases in this court and the preparation of a single record covering all three cases.

In the same note to *Mobile Improvement and Building Company v. Stein*, to which we have heretofore referred, it is pointed out that the necessity of taking a separate appeal from each of the judgments is not done away with by the fact that the cases were consolidated for purposes of trial in the lower court, the rule being thus stated:

> "It is well settled that where separate causes have been tried together by the consent or agreement of the parties, or consolidated and tried to-

gether by order of the court, merely for convenience and separate judgments have been rendered, a single appeal or writ of error is not sufficient to review such judgments.

United States: Louisville, etc., R. Co. v. Summers, 125 Fed. 719, 60 C. C. A. 487; Waters-Pierce Oil Co. v. Van Elderen, 137 Fed. 557, 70 C. C. A. 255.

Colorado: See La Fitte v. Ft. Collins, 42 Colo. 293, 93 Pac. 1098.

Georgia: Bones v. National Exch. Bank, 67 Ga. 339; Pupke v. Meador, 72 Ga. 230; Western Assur. Co. v. Way, 98 Ga. 746, 27 S. E. 167; Dickey v. State, 101 Ga. 572, 28 S. E. 980; Erwin v. Ennis, 104 Ga. 861, 31 S. E. 444; Hicks v. Walker, 105 Ga. 480, 30 S. E. 383; Haralson County v. Pittman, 105 Ga. 513, 31 S. E. 183; Walker v. Conn, 112 Ga. 314; 37 S. E. 183; Wells v. Coker Banking Co., 113 Ga. 857; 39 S. E. 298; Purvis v. Ferst, 114 Ga. 689, 40 S. E. 723; Center v. R. N. Fickett Paper Co., 117 Ga. 222, 43 S. E. 498; Brown v. Louisville, etc., R. Co., 117 Ga. 222, 43 S. E. 498; Harris v. Gano, 117 Ga. 950, 44 S. E. 8; Cole v. Stanley, 118 Ga. 259, 45 S. E. 282; Valdosta Guano Co. v. Hart, 119 Ga. 909, 47 S. E. 212.

Indiana: Roach v. Baker, 145 Ind. 330, 43 N. E. 932, 44 N. E. 303. See also Giller v. West, 162 Ind. 17, 69 N. E., 548.

Iowa: See Hidy v. Hanson, 116 La. 8, 89 N. W. 36.

North Carolina: Williams v. Carolina, etc. R. Co., 144 N. C. 498, 12 Ann. Cas. 1000, 57 S. E. 216, 12 L. R. A. N. S. 191.

South Carolina: See Lee v. Buck, 13 S. C. 178.

Texas: Mohr v. Cochran, 20 Tex. Civ. App. 183, 49 S. W. 677; Missouri, etc., R. Co. v. Davidson, 55 S. W. 188. See also Mills v. Paul, 30 S. W. 242.

Wisconsin: Montgomery v. American Cent. Ins. Co., 106 Wis. 543, 82 N. W. 532.

In *Williams v. Carolina etc. R. Co., 144 N. C. 498, 12 Ann. Cas. 1000, 57 S. E. 216, 12 L. R. A. N. S. 191,* where the judgments in two actions tried together for convenience were brought up for review by one appeal, the court said: "The verdict was substantially separate as to each plaintiff, and the judgment and appeals should have corresponded, two cases being constituted here." And in *Mohr v. Cochran, 20 Tex. Civ. App. 183, 49 S. W. 677,* it was held that the fact that by an agreement between the parties two separate and distinct suits were tried together did not give the right to appeal both cases by a single transcript. In *Waters-Pierce Oil Co. v. Van Elderen, 137 Fed. 557, 70 C. C. A. 255,* it was held that although two actions brought by different plaintiffs against the same defendants, for personal injuries received in the same accident, were by consent consolidated and tried before the same jury, which returned separate verdicts on which separate judgments were entered, and by consent one bill of exceptions was sued out, two separate writs of error were necessary.

In *O'Connor v. Force, (Wash.) 108 Pac. 454,* however, it was held that where two actions were consolidated by agreement of counsel, **and a single judgment was entered,** the judgment could be brought up for review by a single appeal. See also *Harris v. Sweetland, 48 Mich. 110, 11 N. W. 830; Bramell v. Adams, 146 Mo. 70, 47 S. W. 931; Wenatachee First Nat. Bank v. Fowler, 51 Wash. 638, 99 Pac. 1034.* But where the parties to separate cases consent that they shall be heard together so far as concerns action upon demurrers filed therein, but chose to keep the cases separate and not to consolidate them until after the demurrers have been disposed of, the fact that the cases are then

consolidated and the verdict and judgment dispose of the cases as one, does not authorize the review by a single writ of error of the action of the court on the demurrers. *Purvis v. Ferst, 114 Ga. 689, 40 S. E. 723.*

In *Prinz v. Moses, (Kan.) 66 Pac. 1009*, it was held that the consolidation by the trial court of several causes of action between different parties after the rendition of separate judgments therein, for the purpose of prosecuting proceedings in error, could not be sustained. In that case, however, the court stated that the petition in error in the original action, with which the other actions were consolidated, was properly before it, and such petition was considered.

Other cases to the same effect are:

Alabama:

Wynn v. Tallapoosa County Bank, 53 So. 228, 168 Ala., 469;

Connecticut:

Seely v. Staples, 2 Root 74 (Conn. 1794);
Watson v. Hart, 2 Root 59 (Conn. 1793);

Georgia:

Cutter v. Central Bank & Trust Corp., 95 S. E. 285, 147 Ga. 754;
Futch v. Mathis, 97 S. E. 516, 148 Ga. 558;
Averitt v. Simpson, 94 S. E. 242, 147 Ga. 352;

Illinois:

Legro v. Drainage Comm'rs. of Ashkum Drainage Dist. No. 1, 130 N. E. 369, 297 Ill. 155;

North Dakota:

Doerr v. Huether, 193 N. W. 307, 49 N. D. 717;

New Mexico:

Palmer v. Town of Farmington, 179 P. 227, 25 N. M. 145;

Oklahoma:

Harper v. Stumpff, 203 P. 194, 84 Okla. 187;
Callahan v. Nida, 207 P. 966, 86 Okla. 279;
Brown v. Folsom, 222 P. 246, 94 Okla. 286;
First National Bank v. Ackors, 235 P. 185, 109 Okla. 228;

Oregon:

Donart v. Stewart, 126 P. 608, 63 Or. 76;

Pennsylvania:

Heller v. Bercaw, 62 Pa. Super. Ct. 385;
Idell v. Day, 79 Pa. Super. Ct. 215;
Commonwealth v. Andoukitis, 83 Pa. Super. Ct. 206;

South Dakota:

Ewing & Hirsch v. Lunn, 109 N. W. 642, 21 S. D. 55;
National Surety Co. v. Cranmer, 131 N. W. 864, 27 S. D. 515;
Anderson v. Hultman, 80 N. W. 165, 12 S. D. 105;

Virginia:

Commonwealth v. Round Mountain Mining & Mfg. Co., 83 S. E. 1061, 117 Va. 30;
Williams v. Fidelity Loan & Savings Co., 128 S. E. 615, 142 Va. 43, 45 A. L. R. 664;

Washington:

Oerter v. Georger, 126 P. 103, 70 Wash. 110, Ann. Cas. 1914-B, 686;

Wisconsin:

Terry v. Chandler, 23 Wis. 456;
(Wis. 1873) Noble v. Strachan, 32 Wis. 314;

Miscellaneous:

Gordon v. Kelly, 104 N. W. 605.

The distinction generally drawn between cases consolidated for purposes of trial only and cases in which a true consolidation has taken place, appears usually to rest upon whether one judgment is rendered in the consolidated cases or whether a separate judgment is rendered in each

case. As was held by the Supreme Court of Georgia in the case of *Walker v. Conn, 37 S. E. 403, 112 Ga. 314:*

> "Where two actions brought by the same plaintiffs against different defendants were consolidated for the purpose of trial, and a separate judgment of nonsuit rendered, and plaintiffs bring but a single bill of exceptions to review both judgments, the writ of error must be dismissed, since the supreme court has no jurisdiction to entertain it."

And again as was held by the Supreme Court of Ohio in the case of *Chapman Mfg. Co. v. Taylor, 55 N. E. 1003, 61 Ohio St. 394:*

> "Separate judgments rendered against separate parties on separate cause of action, though rendered in favor of the same party, in a proceeding involving priority of right between parties in the distribution of a fund, give rise to separate rights to prosecute error; and the parties against whom such separate judgments are rendered cannot unite in prosecuting error."

A succinct statement to the same effect is found in the syllabus to *Commonwealth v. Round Mountain Mining & Mfg. Co., 83 S. E. 1061, 117 Va. 30:*

> "Where the owner of land in each of three years filed an application to correct assessments on it, and the separate proceedings were removed by separate orders to the lower court, which decreed relief to the owner, rendering separate judgments in each of the cases, in which the commonwealth made separate defenses and took separate assignments of error, the cases could not be brought up on a single writ of error."

Upon the authority of these decisions and in accordance with the general common law practice prevailing throughout the country, it is respectfully submitted that the appellants may not by a single appeal procure the consideration by this Court of judgments in three suits which are separate and distinct and which have not been consolidated except for the purpose of trial; and that accordingly the appeal should be dismissed.

Respectfully submitted,

G. L. PORTERIE,
R. J. O'NEAL,
A. M. PYBURN,
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APPENDIX TO BRIEF FOR APPELLEES IN SUPPORT OF MOTION TO DISMISS APPEAL.

PORTIONS OF RECORD CONSIDERED BY APPELLEES TO BE PERTINENT TO THE CONSIDERATION OF THE MOTION TO DISMISS THE APPEAL.

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APPENDIX TO BRIEF FOR APPELLEES IN SUPPORT OF MOTION TO DISMISS APPEAL.

Shreveport, Louisiana,
Wednesday, April 22nd, 1931.

Court met pursuant to adjournment, Their Honors Judges Roberts, Mills, and Bell, presiding.

The minutes of yesterday were read and approved in open Court.

56012, 56115, and 56125

AMERICAN NAT'L BANK et al.

vs.

LA. TAX COMMISSION et al.

Motion, Filed April 21, 1931, to Consolidate This Suit with Suits No. 56012, First Nat'l Bank *vs.* La. Tax Commission et al., and No. 56115, Commercial Nat'l Bank *vs.* La. Tax Commission,

The motion to consolidate is sustained, and accordingly Suit No. 56012, First Nat'l Bank *vs.* Louisiana Tax Commission et al.; Suit No. 56115, Commercial Nat'l Bk., Suit No. 56125, American Nat'l Bk. *vs.* Louisiana Tax Commission et al. are ordered consolidated.

Shreveport, Louisiana,
Saturday, Sept. 26th, 1931.

Court met pursuant to adjournment, Their Honors Judges Bell, Roberts, and Mills, presiding.

The minutes of yesterday were read and approved in open Court.

56012, 56115, and 56125

FIRST NAT'L BANK et al.

vs.

LA. TAX COMMISSION et al.

Motion made by Counsel for defendants for orders of suspensive and devolutive appeal to the Supreme Court of Louisiana.

Appeal granted as asked for, returnable on November 23, 1931, without bond.

No. of Suit: 56012

FIRST NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

"PETITION."

Filed Feb. 4, 1931. V. G. Simmons, Dy. Clerk.

To the Honorable Judges of the First Judicial District Court in and for the Parish of Caddo, State of Louisiana:

The petition of the First National Bank of Shreveport, Louisiana, respectfully represents:

1

That it is a corporation organized and chartered under the laws of the United States, with its domicile at Shreveport, in Caddo Parish, Louisiana, and in suing in its own behalf and in behalf of its individual shareholders, as shown by authority of the board of directors of this corporation, a certified copy of which is attached hereto and made part hereof.

2

Petitioner avers that it is a national banking association with articles issued to it in pursuance of the Acts of Congress and that it is now and has been for many years, particularly during all of the years 1929 and 1930 engaged in the general business of banking, including purchasing, discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, including automobile paper; receiving deposits, consisting of time, demand and savings deposits, evidenced by savings pass books and certificates of deposit; buying and selling exchange coin and bullion; loaning money on personal security, on financial statements and upon collateral security and on mortgages executed to the bank or assigned or deposited with it as collateral security; buying and selling

investment securities; the purchasing and sale of Government, State and Municipal bonds; maintaining a bond and trust department; conducting a safety deposit box business, and enjoying all other incidental powers as are necessary to carry on the business of banking.

3

That its place of business is at Shreveport, Louisiana, a city with a population of approximately eighty thousand, which city is the financial and business center of more than two hundred thousand people.

4

That it has paid all taxes lawfully levied against it for the year 1930, whether by the state, parish, city of Shreveport or other political subdivision, and petitioner attaches and makes part hereof the official receipt for such taxes, which represents all taxes lawfully assessable against it for 1930, being upon the only real estate owned by petitioner in the State of Louisiana, and being the only tax not now in contest.

5

Petitioner avers that the Assessor for the Parish of Caddo on January 20, 1931, filed in the office of the Clerk of the Court of Caddo Parish, the official assessment rolls for the year 1930, purporting to show the taxes lawfully levied and due to the State of Louisiana, and to the Parish of Caddo; and on January 7, 1931, filed in the office of the Secretary-Treasurer and Ex-Officio Tax Collector of the City of Shreveport the assessment rolls for the year 1930, purporting to show the taxes lawfully levied and due to the City of Shreveport.

5

6

That the rate of taxation for said year has been officially fixed as follows:

State five and three-quarter mills, Parish fourteen and six-tenths mills, City eleven and one-half mills on each dollar of assessed valuation.

7

That upon said rolls there appears a pretended assessment against this petitioner as follows:

First National Bank of Shreveport

			Assessment.	Tax.
Business Furniture and Fixtures			$21,400	$435.49
Capital		$1,000,000.00		
Surplus		500,000.00		
Undivided Profits		140,272.50		
		$1,640,272.50		
Less:				
Real Estate and Improvements	$100.00			
Furniture and Fixtures	21,434.10			
		21,534.10		
		$1,618,738.40	1,618,740	32,941.36
			$1,640,140	$33,376.85

upon which the State of Louisiana and Parish of Caddo claim an aggregate tax of $33,376.85.

That the tax claimed by the City of Shreveport on the aforesaid assessment is as follows:

Furniture and fixtures	$246.10
Capital stock reserve and surplus	18,615.51
Total	$18,861.61

8

That following the pretended assessment against this petitioner, there appears upon said roll a list of the individual shareholders in the association and the number of shares owned by each, but that on such list of shareholders no credits of any nature whether for bills payable or otherwise, are set forth, granted or allowed to the individual shareholders; and that in the assessment of notes and other items as credits under the state laws, which items come into competition with the business of petitioner, the shareholders in corporations other than your petitioner are entitled to offset the same with their bills payable and other debts, which is an unlawful discrimination and preference against your petitioner and its shareholders.

9

That in the manner and within the time required by law, petitioner filed with the Tax Assessor of Caddo Parish, and with the Louisiana Tax Commission proper renditions and sworn lists of such shareholders and the number of shares so owned by each, same being made at the direction of and in the manner prescribed by said authorities.

10

That there are now and were during all the years 1929 and 1930 within the city of Shreveport, and within

the State and locality of the operation of the business of this petitioner, a large number of individuals, firms, corporations and associations employing and using moneyed capital in the same manner and method and in the same sort of transactions as those employed by this petitioner in the business operated by it as defined in paragraph two hereof, and as contained in its lawful and chartered powers; that such other moneyed capital is and was during all the years 1929 and 1930, substantial in amount when compared with the capitalization of this and the only other national banks operating in the same locality, and that the capital so employed by such individuals, firms, associations and corporations is greatly in excess of the moneyed capital of the said national banks.

11

That the aforesaid operations of said individuals, firms, corporations and associations are and were during all of the years 1929 and 1930 in direct, active and open competition with the business of your petitioner, particularly several homestead or mutual building associations, Morgan plan banks, many small loan companies as licensed by Act 7 of the extra session of the Louisiana Legislature for 1928, investor's mortgage companies, life insurance companies, societies and associations, finance and loan corporations, pawn brokers and individuals and other businesses of like competitive nature, as will be fully shown on trial hereof.

12

That your petitioner on said tax rolls is charged with assessment for 1930 of 100% valuation of its capital stock, surplus and undivided profits and furniture and fixtures.

13

That there is no authority in law for the imposition of the tax upon petitioner's business furniture and fixtures.

14

That none of your said petitioner's competitors (except State Banks) are subjected to any like assessment of taxes; that the Legislature of Louisiana has imposed no tax, nor provided for any assessment or taxation upon the capital stock, reserve, surplus, undivided profits or moneyed capital employed by such competitors, or against the shares or shareholders of any member of any of the aforesaid competing businesses.

15

Petitioner avers that by virtue of its corporate powers and the laws of the United States under which it is organized, it does not now own, nor has ever owned, and is prohibited from owning the capital stock of any corporation, all of the assets of which consist:

1. Of real estate acquired for debt, and/or

2. The building or buildings in which are located the main and/or branch banking house or houses of a bank, and/or

3. The furniture and fixtures located thereon and owned in connection therewith,

but that under the provision of Section 4 of Act No. 14 of 1917, as amended by Act 221 of 1928, the Legislature of Louisiana has extended to banks organized under the laws of the State of Louisiana the privilege of deducting from the value of their capital stock as

shown by the statements required by said act the value as included in said statements of the capital stock and obligations of any corporation, all the capital stock of which (except directors' qualifying shares, if any) is owned by such banks, and all, or substantially all, the assets of which consist of property enumerated in 1, 2 and 3 listed in this paragraph; and that as no such privilege could be extended to national banks and particularly to your petitioner, there is therefore an unlawful discrimination in favor of the banks organized under the laws of the State of Louisiana, and against such national banks and particularly your petitioner by virtue of the operation of the provisions of said state laws, in this, that in the application of Section 4 of Act 14 of 1917, as amended by Act 221 of 1928, the value of property to the extent of or in excess of the value of all the capital stock is deducted by said State banks and by the Louisiana Tax Commission and by the Assessor of Caddo Parish and the other parishes of the State and they thus escape taxation, both in the valuation of the shares of capital stock of such banks under said acts and by virtue of the fact that the capital stock and obligations of such holding corporations are exempt from taxation entirely; and that such discrimination is prohibited by the provisions of Section 5219 of the Revised Statutes of the United States, U. S. C. A. Title 12, Sec. 548.

16

That by article 10 of section 4 of the Constitution of Louisiana there is exempted from taxation cash on hand or on deposit loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana, and the notes or other evidences thereof; loans by life insurance companies to policy holders secured solely by their policies; loans by homestead associations to their members secured solely by

stock in such associations; also other exemptions; and that thereby your petitioner's said competitors completely escaped taxation for the years 1929 and 1930, and previous years upon the same character of assets on which your petitioner was taxed.

17

That in the assessment of bonds issued by any State of the United States and political subdivisions of any such State, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations and bonds secured by real estate, except such as are exempt from taxation by law, under the provisions of Act No. 163, of 1924, such items are assessed at ten per cent (10%) of the market value thereof as ascertained by the taxing authorities; that your petitioner has had for the years 1929 and 1930 and previous years an amount invested in such securities far in excess of its capital stock, surplus and undivided profits, and that it and its shareholders are not permitted to deduct 90% of the market value of such securities for the purpose of the assessment under Act No. 14 of 1917, as amended, which results in a discrimination in favor of the owners of such securities and against your petitioner and its shareholders, and in the taxing of items employed and used in the same manner and method and in the same sort of transactions as those employed by petitioner in the business operated by it at a lesser rate than it imposed upon your petitioner and its shareholders, contrary to the provisions of R. S. 5219 of the United States. That there is a substantial amount of such items, far exceeding the total amount of the capital stock of your petitioner, in the hands of individuals and other taxpayers coming into competition with petitioner, that is assessed at less than the rate imposed upon the value of petitioner's shares of stock.

18

That said assessment and tax is null, void and of no effect in its entirety and is an unjust imposition and arbitrary discrimination against your petitioner and the individual shareholders therein.

19

That said assessment in violative of and in conflict with the Constitution of the State of Louisiana, particularly Section 2 of Article 1 thereof: and is violative of and in conflict with the Constitution of the United States, particularly Section 1 of the Fourteenth Amendment thereof, in that petitioner is being deprived of its property without due process of law as a direct result of such unlawful assessment and discriminatory taxation and is furthermore violative of and in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said unlawful assessment and discriminatory taxation denies your petitioner the equal protection of the laws; and is further in conflict with the Acts of Congress as enacted by Section 5219 of the United States Revised Statutes and Title 12, Section 548, of the United States Code Annotated; and is violative of and in conflict with the Constitution of the State of Louisiana and the Constitution of the United States and the articles and sections thereof above enumerated, by the taking of petitioner's property without due process of law, and by denying petitioner the equal protection of the laws; and is further violative of and in conflict with Article 10 of Section 1 of the Constitution of the State of Louisiana, requiring that all taxes be equal and uniform.

20

That Act No. 14 of the extra session of the Louisiana Legislature for 1917, as amended by Act 116 of

1922, and Act No. 221 of 1928, and the manner of enforcement thereof is repugnant to Section 5219 of the Revised Statutes of the United States, Title 12, Section 548, of the United States Code Annotated; and is repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, in that it abridges the privileges and immunities guaranteed by said article to this petitioner; and that petitioner is thus deprived of said privileges and immunities thereby being deprived of its property without due process of law, as set forth in Article 1 of the Fourteenth Amendment to the Constitution of the United States.

21

Petitioner avers that T. R. Hughes, Sheriff and Ex-Officio Tax Collector of the Parish of Caddo, and the City of Shreveport, will proceed to enforce the collection of said taxes against your petitioner, unless same are decreed to be invalid and ineffective, and that judgment should be rendered annulling and avoiding the said assessment and the tax resulting therefrom in all respects. That the Louisiana Tax Commission, domiciled at Baton Rouge, Louisiana, and John W. A. Jeter, Tax Assessor of the Parish of Caddo, the City of Shreveport and the Police Jury of said Parish should be made parties defendant herein. Petitioner reserves the right to apply for writs of injunction herein against said defendants, if necessary to protect petitioner's rights.

Wherefore petitioner prays that the Tax Commission of Louisiana, domiciled at Baton Rouge, Louisiana, T. R. Hughes, Sheriff and Ex-Officio Tax Collector, of Caddo Parish, Louisiana, and the City of Shreveport, through J. G. Palmer, Mayor, John W. A. Jeter, Tax Assessor for Caddo Parish and the Police Jury of Caddo Parish, be duly cited to answer hereto, and a copy hereof be served upon them; and after all

legal delays and due proceedings had, that judgment be rendered annulling and avoiding said assessment and the taxes imposed as above set forth for the year 1930, and decreeing same to be unconstitutional, null, void and of no effect.

Petitioner further prays for all needful orders and decrees, for trial by preference, and for general and equitable relief.

LEWELL C. BUTLER,
J. P. WALLACE,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, came and appeared Andrew Querbes, who being duly sworn, deposes and says that he is the President of the First National Bank, of Shreveport, Louisiana, and that he is authorized to make this oath, and that all of the allegations and averments made and contained in the foregoing petition are true and correct to the best of his knowledge, information and belief.

ANDREW QUERBES.

Sworn to and subscribed before me this 4th day of February, 1931.

JOHN B. HUSSEY, JR.,
Notary Public.

No. of Suit: 56012

FIRST NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

PETITION FOR INJUNCTION & ORDER

Filed June 1, 1931. V. G. Simmons, Dy. Clerk

Plaintiff, with respect, shows that the Sheriff and Tax Collector of Caddo Parish, Louisiana, and J. T.

Tanner, Tax Collector of the City of Shreveport, Louisiana, threatens and, unless enjoined, will proceed to enforce payment of the tax in contest, pending final decision herein.

Wherefore, considering the pleadings and the evidence heretofore adduced on trial, plaintiff prays for a preliminary injunction to be issued, after hearing on a rule, to show cause, and upon bond being furnished, as the Court may require, enjoining and restraining T. R. Hughes, Sheriff and Tax Collector of the City of Shreveport, Louisiana, and J. T. Tanner, Tax Collector of the City of Shreveport, Louisiana, from collecting or attempting to collect the tax in contest, until the final determination of the cause; that in the final judgment, the injunction be made permanent, and for general equitable relief.

LEWELL C. BUTLER,
J. P. WALLACE,
Attorneys for Plaintiff.

Order

Let a rule issue ordering the defendants to show cause, if any, before me, Thursday, June 4, 1931, at 2 o'clock P. M., why a preliminary writ of injunction should not issue as prayed for.

This 29th day of May, 1931.

E. P. MILLS,
District Judge.

I hereby waive formal rule and accept service of the foregoing petition and order.

This 1 day of June, 1931.

THOS. R. HUGHES,
T. C.,
By ROBT. J. O'NEAL,
Atty. for T. C.;
A. M. PYBURN,
Attorneys for Defendants.

No. of Suit: 56012

FIRST NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

ORDER FOR ISSUANCE OF WRITS

Filed June 5, 1931. E. W. Goetz, Jr., Dy. Clerk

In this case by reason of the law and the evidence being in favor thereof;

It it ordered, adjudged and decreed that T. R. Hughes, Sheriff of the Parish of Caddo, Louisiana; and J. T. Tanner, Tax Collector of the City of Shreveport, Louisiana, be enjoined, restrained and prohibited from proceeding to collect the taxes assessed against the First National Bank, plaintiff herein, for the year 1930; and that writs of injunction issue herein, upon plaintiff giving bond, according to law.

Done, read, and signed in open Court on this 5th day of June, 1931.

E. P. MILLS,
District Judge.

No. of Suit: 56115

COMMERCIAL NAT'L BANK

vs.

LA. TAX COMMISSION et al.

PETITION

Filed Feb. 17, 1931. L. C. Matthews, Dy. Clerk

To the Honorable the First Judicial District Court in and for the Parish of Caddo, State of Louisiana:

The petition of the Commercial National Bank of Shreveport, Louisiana, a corporation domiciled in your

Parish and State, sueing in its own behalf and in behalf of its shareholders, with respect shows:

I

Petitioner is incorporated under the laws of the United States for carrying on the business of banking, and for many years, particularly during 1930, has been engaged in the business of general banking, which includes discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; receiving demand, savings and time deposits; buying and selling exchange, coin, bullion, government, state and municipal bonds, and other investment securities; lending money on financial statements, personal security, the security of chattel and real estate liens and mortgages, life insurance policies, stock of homestead and building associations, stock of other corporations, and the pledge of personal property; maintaining a trust department; conducting a safety deposit business; and exercising such incidental powers as are necessary to carry on the business of banking.

II

Petitioner's principal place of business is at Shreveport, Caddo Parish, Louisiana, which has a population of approximately 80,000, and its business extends over a territory with a population in excess of 200,000.

III

On January 23, 1931, the Assessor of Caddo Parish filed assessment rolls for 1930, in the offices of the Clerk of the District Court and Ex-Officio Recorder and the Sheriff and Ex-Officio Tax Collector of said Parish, on which taxes are assessed to petitioner on property and to its shareholders on capital stock at

20.35 mills on the dollar, the aggregate rate of taxation levied on taxable property for 1930 by the State of Louisiana, Parish of Caddo, and political subdivisions in which petitioner's business is located, as follows:

Assessment No.	Property assessed	Valuation	Amount of tax
6329	Real Estate	$613,730.00	$
	Auto	400.00	
	Business Furniture and Fixtures	139,900.00	
	Total	754,030.00	14,344.51
6330	Real Estate	5,440.00	112.06
6331	Real Estate	35,320.00	753.30
6332	Net value of capital Stock	632,340.00	12,868.12
	Total		28,077.99

IV

Assessment rolls have also been filed in the office of the Tax Collector of the city of Shreveport, on which taxes are likewise assessed to petitioner and its shareholders on the above valuations of property and shares (exclusive of certain real estate outside the city) at 11.50 mills on the dollar, the rate of taxation levied by the city of Shreveport on taxable property for 1930, amounting to $15,943.25.

V

Petitioner has paid the taxes thus assessed on real estate by the State of Louisiana, Parish of Caddo, and political subdivisions therein, and through oversight, inadvertence and error paid the whole amount of taxes assessed by the city of Shreveport. Receipts therefor are hereto attached.

VI

Petitioner's property and shares, except real estate, are not taxable by or under authority of the State of Louisiana.

VII

Acts No. 14 of the General Assembly of Louisiana of 1917, No. 116 of the Legislature of 1922, and No. 221 of the Legislature of 1928, which purport to authorize the taxation of bank shares, are invalid and inoperative as to petitioner and its shareholders and the assessment of petitioner's shares is illegal and unauthorized for the following reasons:

(a) The *rates* are greater than are assessed upon other moneyed capital in the hands of individual citizens of Louisiana coming into competition with the business of national banks.

(b) Moneyed capital, on which no taxes are assessed by the State of Louisiana or under its authority, exceeding the total capital of all national banks in the city of Shreveport and many times petitioner's capital, is and during 1930 was employed in direct, open and substantial competition with petitioner's business in the city of Shreveport and territory in the State of Louisiana over which petitioner's business extends, by persons, partnerships and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking.

(c) Persons, partnerships and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking, who employ and during 1930 did employ moneyed capital in direct, open and substantial competition with petitioner's business, include homestead and building associations, Federal Joint Stock Land Banks, associations commonly called Morris Plan Banks and Morgan Plan Banks, small loan companies licensed under Act No. 7 of the Extra Session of the Legislature of 1928, finance and securities companies licensed under Act No. 221 of the Legislature of 1926,

pawnbrokers, life insurance companies, real estate mortgage investment companies, bond and investment brokers, and others engaged in one or more of the classes of business enumerated in Article 1 of this petition.

(d) Act No. 14 of 1917, as amended by Act No. 116 of 1922 and Act No. 221 of 1928, discriminates against capital employed in general banking in favor of shares in Federal Joint Stock Land Banks.

(e) Shares of stock in associations and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking, are not taxed or taxable in Louisiana.

(f) The Constitution of Louisiana exempts from taxation cash on hand or on deposit; loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana and the notes or evidences thereof; loans by life insurance companies to policy holders, secured solely by their policies; loans by homestead associations to their members, secured solely by stock of such associations; debts due for merchandise or other articles of commerce or for services; obligations of the State or its political subdivisions; the legal reserve of life insurance companies organized under the laws of this State, for all of which purposes moneyed capital is employed in direct, open and substantial competition with petitioner's business.

(g) Investments in direct, open and substantial competition with petitioner's business, in bonds of other States of the United States and political subdivisions of such States, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations, and bonds secured by real estate, except such as are exempt from taxation by law, are assessable

under Act No. 163 of the Legislature of 1924, at 10% of their market value, and, in practice, rarely assessed.

(h) In assessing credits and securities, other than shares of associations chartered to carry on the business of banking, deduction is made for liabilities of the owner, whereas no such deduction is made in the assessment of petitioner's shares.

(i) The assessment is repugnant to Section 5219 of the Revised Statutes of the United States, U. S. C. A., Title 12, Section 548, and Section 1 of Article X of the Constitution of Louisiana, and denies petitioner and its shareholders the equal protection of law in violation of the Fourteenth Amendment of the Constitution of the United States.

VIII

Prior to January 20, 1930, at the request of the Louisiana Tax Commission and the Assessor of Caddo Parish, petitioner furnished each of them a list of its shareholders and a duly authenticated statement concerning its business as of December 31, 1929, according to its report to the United States Comptroller of the Currency, showing:

Value of its capital stock (including surplus and undivided profits)		$1,826,750.35
Value of real estate, exclusive of banking lot and banking house	$158,892.66	
Value of banking lot	177,540.00	
Value of banking house	595,460.00	
Value of furniture and fixtures	139,970.54	
Value of capital stock of corporations, all capital stock of which (except directors' qualifying shares) is owned by petitioner	150,000.00	
		1,221,863.15
		604,887.15

IX

If it be held that petitioner's shares are taxable the maximum authorized assessment is $604,887.15.

X

Petitioner reserves the right to apply for writs of injunction, if necessary.

Wherefore petitioner prays for citation and service on the Louisiana Tax Commission, the Police Jury of Caddo Parish, John W. A. Jeter, Assessor, T. R. Hughes, Sheriff and Ex-Officio Tax Collector, and the City of Shreveport; and for judgment in due course annulling and ordering the cancellation of the assessment for 1930 of petitioner's property and shares, except real estate, restraining the Sheriff and Ex-Officio Tax Collector from collecting taxes thereon and condemning the City of Shreveport to refund to petitioner $8,885.36 paid on the illegal and unauthorized assessment;

In the alternative as to shares of its capital stock, if it be held that they are taxable, petitioner prays for judgment ordering the assessment reduced to $604,887.15, restraining the Sheriff and Ex-Officio Tax Collector from collecting taxes on valuation in excess thereof, and condemning the city of Shreveport to re-refund the amount of taxes paid on the excess;

And for general relief.

BARKSDALE, BULLOCK, WARREN,
CLARK & VAN HOOK,
By H. B. WARREN,
J. P. WALLACE,
LEWELL C. BUTLER,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Caddo:

J. A. Walden, being by the undersigned duly sworn, says that he is Cashier of the Commercial National Bank of Shreveport and the facts recited in the foregoing petition are true.

J. A. WALDEN.

Subscribed and sworn to before me on this 17th day of February, 1931.

MARIE T. HASSLER,
Notary Public.

Service hereof accepted for Thos. R. Hughes, T. C.; Jno. W. A. Jeter, Assessor; La. Tax Commission, and Police Jury of Caddo. All legal delays and rights reserved.
Feb. 17, 1931.

ROBT. J. O'NEAL.

Service accepted. Citation waived. Legal delays and all other rights reserved.
Feb. 17, 1931.

A. M. PYBURN,
City Attorney.

No. of Suit: 56115

COMMERCIAL NAT'L BANK

vs.

LA. TAX COMMISSION et al.

PETITION FOR INJUNCTION

Filed June 1, 1931. V. G. Simmons, Dy. Clerk.

Plaintiff, with respect, shows that the Sheriff and Tax Collector of Caddo Parish, threatens, and, unless enjoined, will proceed to enforce payment of the tax in contest pending final decision herein.

Wherefore, considering the pleadings and the evidence heretofore adduced on the trial, plaintiff prays for a preliminary injunction, to be issued after hearing on a rule to show cause, and upon bond being furnished as the Court may require, enjoining and re-

straining T. R. Hughes, Sheriff and Tax Collector of Caddo Parish, Louisiana, from collecting or attempting to collect the tax in contest until the final determination of this cause; that in the final judgment the injunction be made permanent, and for general and equitable relief.

J. P. WALLACE,
LEWELL C. BUTLER,
BARKSDALE, BULLOCK, WARREN,
CLARK & VANHOOK,
Attorneys for Plaintiff.

Let a rule issue orderng the defendants to show cause, if any, before me on Thursday, June 4th, 1931, at 2 o'clock P. M. why a preliminary writ of injunction should not issue as prayed for.

This 29th day of May, 1931.

E. P. MILLS,
Judge.

I hereby waive formal rule and accept service of the foregoing petition and order.

This 1 day of June, 1931.

THOS. R. HUGHES,
T. C.,
By ROBT. J. O'NEAL, *Atty.*

No. of Suit: 56115

COMMERCIAL NAT'L BANK

vs.

LA. TAX COMMISSION et al.

JUDGMENT ON RULE

Filed June 5, 1931. E. W. Goetz, Jr., Dy. Clerk.

Upon trial of the rule to show cause why a preliminary injunction should not issue, considering the

evidence heretofore adduced and the law being in favor thereof,

It is ordered, adjudged, and decreed that the rule be made absolute and that a preliminary injunction issue upon plaintiff furnishing bond according to law enjoining and restraining T. R. Hughes, Sheriff and Ex-Officio Tax Collector of Caddo Parish, from collecting or attempting to collect the taxes in contest pending final determination of this cause.

Done, read and signed in open Court this 5th day of June, 1931.

E. P. MILLS,
Judge.

No. of Suit: 56125

AMERICAN NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

PETITION

Filed Feby. 19, 1931. V. G. Simmons, Dy. Clerk

To the Honorable Judges of the First District Court in and for the Parish of Caddo, Louisiana:

The petition of the American National Bank of Shreveport with respect shows:

I

That it is a banking corporation or association, organized, chartered and existing under the laws of the United States, with its domicile at Shreveport, Louisiana, and that it appears herein both in its own behalf, and in behalf of its individual shareholders.

II

That it is now and has been for many years, and particularly during all of the year 1929 and for a greater portion of the year 1930, engaged in the general business of banking, including the business of purchasing, discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, including loans on automobiles; receiving deposits consisting of time, demand and savings deposits, said savings deposits evidenced by savings pass books, and said time deposits evidenced by certificates of deposit; buying and selling exchange, coin and bullion; loaning money on personal security, on financial statements and upon collateral security, and on notes secured by mortgages and by vendor's liens; buying and selling investment securities; purchasing and selling Government, State and Municipal bonds; conducting a safety deposit box department, and enjoying all other powers incidental to and necessary for carrying on the business of banking in all branches thereof authorized and permitted by law.

III

That the City of Shreveport, in which petitioner's business was carried on as aforesaid, has a population of approximately eighty thousand (80,000) persons, and is the financial and business center and has within its financial and trade territory more than two hundred thousand (200,000) persons.

IV

That it has paid all taxes lawfully levied against it for the year 1930, whether by the State, Parish, City of Shreveport or other political subdivision, and petitioner attaches and makes part hereof the official receipt for such taxes, which represents all taxes law-

fully assessable against it for 1930, being upon the only real estate owned by petitioner in the State of Louisiana, and being the only tax not now in contest.

V

Petitioner shows that J. W. A. Jeter, Assessor for the Parish of Caddo, filed on January 23, 1931, in the office of the Clerk of Court in and for Caddo Parish, Louisiana, the official assessment rolls for the year 1930, said rolls purporting to show the tax lawfully levied and due to the State of Louisiana, and to the Parish of Caddo.

VI

That the rate of taxation for said year has been officially fixed at 5.75 mills for the State of Louisiana, and 14.6 mills for the Parish of Caddo.

VII

That upon said rolls as so filed, there appears a pretended and purported assessment against petitioner and its shareholders, same reading in words and figures as follows, to-wit: "American National Bank of Shreveport, P. O. Box 1105, Shreveport, La.

(Stockholders)

* * * * * * *

Banks.

Capital	$300,000.00	
Surplus	60,000.00	
Und. Profits	14,598.38	
		$374,598.38
Less.		
Real estate & improvements	232,013.45	
Furn. & Fixt	29,782.20	
		261,795.65
Net Total		$112,802.73

upon which the State of Louisiana and Parish of Caddo claim an aggregate total tax of $2295.48; and that said authorities are claiming an aggregate tax upon petitioner's furniture and fixtures of $604.30.

VIII

That following said pretended assessment against this petitioner and its shareholders, there appears upon said roll a list of the individual shareholders in the said association, and the number of shares owned by each, but that neither on such list of shareholders nor in any way in connection with the same, are any credits, exemptions or deductions of any nature given, granted or set forth, and that in so listing and assessing said shares, no consideration was given to the fact that other moneyed capital so employed as to come into direct and open competition with the business of petitioner, is not so listed and assessed; thus operating an unlawful discrimination and preference, highly prejudicial to the rights of petitioner and its shareholders.

IX

That your petitioner on said tax rolls is illegally and wrongfully assessed at 100% of the value of its capital, surplus and undivided profits, as well as its furniture and fixtures.

X

That there is no authority in law for the imposition of any taxes whatsoever upon petitioner's business, furniture and fixtures.

XI

That there are now, and were during the entire period of the years 1929 and 1930, within the City of Shreveport, Louisiana, and within the State and lo-

cality of the operation of the business of this petitioner and within its financial and trade territory as aforesaid, a large number of individuals, firms, corporations and associations employing and using moneyed capital in the same manner and according to the same method, and in the same character of transactions as were employed by this petitioner in its said business as aforesaid, and as contained in and authorized by its permit and charter and the authority and power granted to it by law; that such other moneyed capital is and was during all the years 1929 and 1930, substantial in amount as compared with the capitalization of the said association of petitioner, and the only other national banks operating in the same locality, and that the capital so employed by said individuals, firms, associations and corporations is greatly in excess of the combined moneyed capital of the said national banks.

XII

That the aforesaid operations of said individuals, firms, corporations and associations are and were during the years 1929 and 1930, in direct, active and open competition with the business of your petitioner, particularly several homestead or mutual building associations, Morgan plan banks, many small loan companies as licensed by Act 7 of the extra session of the Louisiana Legislature for 1928, investors' mortgage companies, life insurance companies, societies and associations, finance and loan corporations, pawn brokers and individuals and other businesses of like competitive nature, as will be fully shown on trial hereof.

XIII

That none of your said petitioner's competitors (with the exception of state banks) are subject to any like assessment of taxes; that the Legislature of Loui-

siana has imposed no tax, nor provided for any assessment or taxation upon the capital stock, reserve, surplus, undivided profits or moneyed capital employed by such competitors, or against the shares or shareholders of any member or any of the aforesaid competing lines of business.

XIV

Petitioner avers that by virtue of its corporate powers and the laws of the United States under which it is organized, it does not now own, nor has it ever owned, and that it is prohibited from owning all the capital stock of any corporation, all of the assets of which consist of real estate acquired for debt, or a building or buildings in which are located the main or branch banking houses of the bank, or the furniture and fixtures located thereon and owned in connection therewith, or any or all of the said property in combination. Shows, however, that under the provisions of Section 4 of Act 14 of 1917, as amended by Act 221 of 1928, the Legislature of Louisiana, has in effect extended to banks organized under the laws of the State of Louisiana the privilege of deducting from the valuation placed on their capital stock, surplus and undivided profits as shown by the statement required by said Act, the value as included in said statement of the capital stock and obligations of any corporation, all of the capital stock of which (except directors' qualifying shares, if any) is owned by such bank or banks, and all—or substantially all—of the assets of which consist of property as described above. Petitioner now shows that as no such privilege can be extended to national banks, and particularly to your petitioner, there results from such act and the operation and application thereof, an unlawful discrimination in favor of the banks organized under the laws of the State of Louisiana, and against national banks,

and particularly against your petitioner; and further that in the application of the provisions of said Section 4 of Act 14 of 1917, as amended by said Act 221 of 1928, the value of property to the extent of or in excess of the value of all the capital stock is deducted by said state banks and by the Louisiana Tax Commission, and by the Assessor of Caddo Parish, and all the other parishes of the State of Louisiana, and that said favored banks thus escape taxation both in the valuation of the shares of capital stock of said banks under said acts, and by virtue of the fact that the capital stock and obligations of such holding corporations are exempt from taxation entirely; and that such discrimination is prohibited by the provisions of Section 5219 of the Revised Statutes of the United States (U. S. C. A. Title 12, Sec. 548, Act of March 4, 1923, as amended March 25, 1926, c. 88, 44 Stat. 223),

XV

That by Article 10 of Section 4 of the Constitution of Louisiana, there is exempted from taxation cash on hand or on deposit; loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana, and the notes or other evidences thereof; loans by life insurance companies to policy holders secured solely by their policies; loans by homestead associations to their members secured solely by stock in such associations; also other exemptions; and that thereby your petitioner's said competitors completely escaped taxation for the years 1929 and 1930, and previous years upon the same character of assets on which your petitioner was taxed.

XVI

Petitioner shows further that under the provisions of Act 163 of 1924, bonds issued by any state of the

United States or political subdivision thereof, by railways and other public utilities, manufacturers and industrial corporations, and bonds secured by real estate, except such as are exempt from taxation by law, are assessed to parties other than national banks at 10% of the market value thereof as ascertained and evaluated by the taxing authority; and that your petitioner had during the years 1929 and 1930, and during previous years, a substantial portion of its capital stock, surplus and undivided profits invested in such securities, and that it and its shareholders are not permitted to deduct 90% of the market value of such securities for the purpose of assessment under said Act No. 14 of 1917, as amended, and that said Act and the application thereof operates an unjust discrimination to the advantage of said favored owners of such securities, and against your petitioner and its shareholders; and in the taxing of items employed and used in the same manner and method and in the same character of transactions as those employed by petitioner such lesser rate is applied to the prejudice of and in discrimination against the business operated by petitioner and its shareholders and against its property, capital stock, surplus and undivided profits as aforesaid, all contrary to the provisions of said Revised Statute 5219, as amended; and further, that a substantial amount of such items, far exceeding the amount of capital stock, surplus and undivided profits of petitioner, was during the years 1929 and 1930, and now, in the hands of individuals and other taxpayers coming into competition with petitioner and that such amount is assessed at less than the rate imposed upon the value of petitioner's shares of stock as aforesaid.

XVII

Shows that said Act 14 of 1917, as amended by Act 116 of 1922, discriminates against capital employed in

the general banking business, and particularly against the capital employed therein by petitioner and its shareholders, in favor of shares of stock issued by Federal Joint Stock Land Banks.

XVIII

Petitioner shows further that said Act No. 14 of the General Assembly of 1917, and said Act 116 of the Legislature of 1922, and said Act 221 of the Legislature of 1928, which Acts purport to authorize the taxation of bank shares as aforesaid, are invalid and inoperative as to petitioner and its shareholders, and that the assessment of petitioner's shares is unauthorized and illegal for the various reasons set out above, and particularly that the effect of said acts was and is to impose a greater rate of taxation upon the moneyed capital employed by petitioner and its shareholders than is imposed upon other moneyed capital in the hands of individual citizens of the State of Louisiana, and firms, partnerships and corporations coming into competition with the business of petitioner and its shareholders, and that said Acts and the operation thereof have resulted in unjust and unfair discrimination against petitioner and its shareholders by giving to the various individuals and corporations hereinabove enumerated employing moneyed capital in direct competition with the capital employed by petitioner and its shareholders either a total exemption from taxation or a rate of taxation substantially lower than that so imposed on petitioner and its shareholders by said Act 14 of 1917, as amended.

XIX

That said assessment and tax is null, void and of no effect in its entirety and is an unjust imposition, and

arbitrary discrimination against your petitioner and the individual shareholders therein.

XX

That said assessment is violative of and in conflict with the Constitution of the State of Louisiana, particularly Section 2 of Article 1 thereof; and is violative of and in conflict with the Constitution of the United States, particularly Section 1 of the Fourteenth Amendment thereof, in that petitioner is being deprived of its property without due process of law as a direct result of such unlawful assessment and discriminatory taxation, and is further violative of and in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said unlawful assessment and discriminatory taxation denies your petitioner the equal protections of the laws and is further in conflict with the Acts of Congress as enacted by Section 5219 of the United States Revised Statutes and Title 12, Sections 548, of the United States Code, Annotated; and is violative of and in conflict with the Constitutions of the State of Louisiana and the Constitution of the United States and the articles and sections hereof above enumerated, in constituting the taking of petitioner's property without due process of law, and by denying petitioner the equal protection of the laws; and is further violative of and is conflict with Article III of Section 1 of the Constitution of the State of Louisiana requiring that [illegible] be equal and uniform.

XXI

That Act No. 134 of the regular session of the Louisiana Legislature for 1937, as amended by Act 106 of 1938, and Act No. 333 of 1938, and the provisions of [illegible] thereof in pursuance to Section 5219 of the

Revised Statutes of the United States, Title 13, Section 563, of the United States Civil Rights Act, and as guaranteed to Section 1 of the 14th Amendment to the Constitution of the United States, in that it abridges the privileges and immunities guaranteed by said article to this petitioner; and that petitioner is thus deprived of said privileges and immunities thereby being deprived of his property without due process of law, as set forth in Article 1 of the Fourteenth Amendment to the Constitution of the United States.

XXII

Since that [illegible] of Act 14 of 1907, as amended as a penal statute providing penalties for its violation of Rules and Regulations, and that being barred by prescription [illegible] with the Tax Assessor of Caddo Parish, and with the Louisiana State Tax Commission, the assessment of its capital stock, surplus and undivided profits and lists of its shareholders [illegible] the number of shares owned by each, as directed and required by the provisions of said Act.

XXIII

Petitioner avers that T. H. Hughes, Sheriff and Tax Collector for the Parish of Caddo will proceed to enforce the collection of said taxes against your petitioner unless same are decreed herein to be invalid, ineffective and unenforceable, and that petitioner is entitled to judgment herein annulling and avoiding the said assessment, and the imposition of the tax resulting therefrom in toto. That the Louisiana Tax Commission, domiciled at Baton Rouge, Louisiana, and J. W. A. Jeter, Tax Assessor of the Parish of Caddo, and the Police Jury of said Parish, should be made parties defendant herein, reserving to petitioner the right to apply for writs of injunction herein against

said defendants if necessary to protect its rights in the premises.

Wherefore petitioner prays that the said Tax Commission of Louisiana, domiciled at Baton Rouge, the said T. R. Hughes, Sheriff and Tax Collector, the said J. W. A. Jeter, Tax Assessor in and for Caddo Parish, and the said Police Jury of said Parish, be duly cited to appear and answer hereto, and that service hereof be made upon all of said defendants according to law; and that after all legal delays and due proceedings had, there be judgment herein, declaring said Act 14 of 1917, and all amendments thereof, null, void and of no effect quoad petitioner's rights herein, and annulling and avoiding said assessment and the taxes imposed thereunder for the year 1930 as above set out, ordering the cancellation thereof from the rolls of Caddo Parish, Louisiana, and on said Tax Commission, and decreeing same to be unconstitutional, null, void and of no effect.

Prays for all necessary orders, and decrees; for trial by preference and for such general, equitable and further and additional relief as may be determined on trial hereof, whether greater or less than is specifically prayed for herein.

THATCHER, BROWNE, PORTEOUS & MYERS,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Caddo:

Personally came and appeared before me, the undersigned authority, E. Wayles Browne, who being duly sworn deposes and says that he is one of the attorneys for petitioner in the above and foregoing petition; that he has read the same and that all of the

allegations therein contained are true and correct to the best of his knowledge and belief.

E. WAYLES BROWNE.

Sworn to and subscribed before me on this 18th day of February, 1931.

PERCY N. BROWNE,
Notary Public.

Service hereof accepted for T. R. Hughes, T. C.; Jno. W. A. Jeter, Assessor; Police Jury of Caddo Parish, La., and Louisiana Tax Commission, all legal delays and legal rights reserved. February 18, 1931.

ROBT. J. O'NEAL,
Attorney for T. C.

No. of Suit: 56125

AMERICAN NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

MOTION TO CONSOLIDATE CASES FOR TRIAL

Filed April 21, 1931. D. D. Pyburn, Dy. Clerk

Now comes the American National Bank, plaintiff in the foregoing numbered and entitled cause, and with respect shows that there are now pending in this Honorable Court, two other suits of like nature, that of the First National Bank *vs.* T. R. Hughes, Sheriff, *et al.*, #56,012, and that of the Commercial National Bank *vs.* Louisiana Tax Commission *et al.*, #56,115.

Mover now shows that the said three proceedings present identical issues of law, and that the facts ad-

duced in one case will likewise be applicable to all of the other cases, except, perhaps, as to certain minor and wholly unimportant details.

Mover now shows that much expense and duplication of time and effort will be saved by the consolidation of these cases for the purpose of trial, and that under the rules of this Court and the Code of Practice of this state, it is entitled to have said cases consolidated for such purpose.

Shows that the case of the Commercial National Bank *vs.* Louisiana Tax Commission *et al.*, above mentioned, has been fixed before his Honor, Judge E. P. Mills, for trial on Tuesday, April 28th, and that mover desires to have this case, and that of the First National Bank *vs.* T. R. Hughes, Sheriff, *et al.*, fixed for trial on said date, and said cases as aforesaid consolidated for the purpose of trial before the same Division of this Court.

Wherefore prays for an order herein consolidating the said three cases for the purpose of trial, and ordering that all of the cases be fixed for trial before the same Division of this Honorable Court as above set out.

Prays for all orders and decrees necessary, and for full and equitable relief in the premises.

THATCHER, BROWNE, PORTEOUS & MYERS,
Attorneys for Mover.

STATE OF LOUISIANA,
Parish of Caddo:

Personally came and appeared before me, the undersigned authority, E. Wayles Browne, who being duly sworn, deposes and says that he is one of the attorneys for mover herein, and that all of the allegations contained in the above and foregoing motion are

true and correct to the best of his knowledge and belief.

E. WAYLES BROWNE.

Sworn to and subscribed before me on this 20th day of April, 1931.

PERCY N. BROWNE,
Notary Public.

We concur in the above motion.

LEWELL C. BUTLER,
J. P. WALLACE,
Attorneys for First National Bank.
BARKSDALE, BULLOCK, WARREN, CLARK & VAN HOOK,
LEWELL C. BUTLER,
J. P. WALLACE,
Attorneys for Commercial Natl. Bank.
PERCY SAINT,
Atty. General;
ROBT. J. O'NEAL,
BLANCHARD, GOLDSTEIN, WALKER & O'QUIN,
R. J. O'NEAL,
ROBT. J. O'NEAL,
Attorneys for Defendants.

No. of Suit: 56125

AMERICAN NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

PETITION FOR INJUNCTION

Filed June 1st, 1931. V. G. Simmons, Dy. Clerk.

Now comes the American National Bank, plaintiff herein, and adopting all of the allegations of its origi-

nal petition as if set out in extenso herein, files this, its supplemental and amended petition:

I

Petitioner now shows that at the time of filing its original petition herein, it understood that the defendants herein would not seek to enforce collection of the taxes, the assessment of which is sought to be annulled in these proceedings, but that since said time, Thos. R. Hughes, Sheriff and Tax Collector of Caddo Parish, through the Attorney for the Tax Collector, has made demand upon plaintiff for immediate payment of the amount of the taxes as shown in the original petition herein, and unless enjoined and restrained therefrom, will proceed to enforce payment of said taxes pending final determination of this cause.

II

Petitioner now shows that it is entitled to a rule herein, ordering the defendants herein to show cause, if any there be, at a time to be fixed by this Court, why a preliminary writ of injunction should not issue, enjoining and restraining said Thos. R. Hughes, Sheriff and Tax Collector of Caddo Parish, Louisiana, from collecting or attempting to collect, the said taxes in contest until the final determination hereof.

Wherefore prays that a rule issue herein, returnable on a day and hour to be fixed by this Honorable Court, ordering the defendants to show cause, if any there be, why a writ of preliminary injunction should not issue herein, enjoining and restraining said Tax Collector from collecting or attempting to collect said taxes during the pendency of this cause, and on trial hereof, that said rule be made absolute and said pre-

liminary writ of injunction issue and in due course, and after due proceedings had, for judgment making said injunction permanent.

Prays for all necessary orders and for general and equitable relief.

THATCHER, BROWNE, PORTEOUS & MYERS,
Attorneys for Plaintiff.

STATE OF LOUISIANA,
Parish of Caddo:

Personally came and appeared before me, the undersigned authority, M. A. McCutchen, who being duly sworn, deposes and says that he is the President of the American National Bank, plaintiff in the above and foregoing amended and supplemental petition, and that all of the allegations therein contained are are true and correct.

M. A. McCUTCHEN.

Sworn to and subscribed before me on this 29th day of May, 1931.

E. WAYLES BROWNE,
Notary Public.

ORDER

The foregoing petition read and considered, it is ordered that a rule issue herein requiring the defendants to show cause, if any there be, on or before Thursday, June 4, 1931, at 2 o'clock P. M. why a preliminary writ of injunction should not issue as prayed for.

This 29th day of May, 1931.

E. P. MILLS,
Judge.

We hereby waive formal rule and accept service of the foregoing petition and order.

This 1st day of June, 1931.

THOS. R. HUGHES,
T. C.,
By ROBT. J. O'NEAL,
Atty. to Asst. T. C.

No. of Suit: 56125

AMERICAN NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

ANSWER OF T. C. TO RULE FOR INJUNCTION

Filed June 4, 1931. E. W. Goetz, Jr., Dy. Clerk.

Now comes Thomas R. Hughes, Tax Collector of Caddo Parish, Louisiana, through undersigned counsel, and for answer to the rule herein issued praying for an injunction restraining your appearer from enforcing the payment of the taxes in contest in this suit, for the reasons set forth in their answer to plaintiff's original petition, deny that plaintiff is entitled to a writ of injunction as prayed for.

Wherefore, premises considered, defendants pray that upon due trial hereof that the rule issued herein be recalled and plaintiff's demands rejected and that plaintiff be required to pay the taxes for the year 1930, the subject of this suit, and that it be condemned to pay ten (10) per cent additional on the amount of taxes in contest as attorney's fees, and for all other

orders and decrees necessary in the premises for cost, general and equitable relief.

By their attorneys.

PERCY SAINT,
Attorney General;
BLANCHARD, GOLDSTEIN,
WALKER & O'QUIN,
ROBT. J. O'NEAL,
Attorneys for Tax Collector.

STATE OF LOUISIANA,
Parish of Caddo:

Robert J. O'Neal, being first duly sworn, says that he is one of the attorneys for defendants and that the facts and allegations set forth in the foregoing answer are true and correct.

ROBT. J. O'NEAL.

Sworn to and subscribed before me at Shreveport, Louisiana, on this the 4th day of June, 1931.

E. W. GOETZ, JR.,
Deputy Clerk of Court.

No. of Suit: 56125

AMERICAN NATIONAL BANK

vs.

LA. TAX COMMISSION et al.

JUDGMENT ON RULE

Filed June 5, 1931. E. W. Goetz, Jr., Dy. Clerk.

Upon trial of the rule to show cause why a preliminary injunction should not issue herein; consid-

ering the evidence heretofore adduced and the law being in favor thereof,

It is ordered, adjudged, and decreed that said rule be made absolute and that a preliminary injunction issue herein upon plaintiff furnishing bond according to law, enjoining and restraining T. R. Hughes, Sheriff and Ex-Officio Tax Collector of Caddo Parish, from collecting or attempting to collect the taxes in contest pending final determination of this cause.

Done, read, and signed in open Court this 5th day of June, 1931.

E. P. MILLS,
Judge.

No. of Suit: 56012

First National Bank

vs.

La. Tax Commission et al.

Judgment

Filed Sept. 26, 1931. D. D. Pyburn, Dy. Clerk.

In this case, after due trial on the merits, the law and the evidence being in favor of plaintiff and against the defendants,

It is ordered, adjudged, and decreed that the assessment for 1930 on the tax roll of Caddo Parish, Louisiana, and the tax roll of the City of Shreveport, of plaintiff's property and shares except real estate, be and the same is hereby annulled, and T. R. Hughes, Sheriff and Ex-Officio Tax Collector of the City of Shreveport, are hereby enjoined and restrained from collecting or attempting to collect taxes thereon.

Done, read, and signed in open court on this the 26th day of September, 1931.

E. P. MILLS,
District Judge.

No. of Suit: 56115

COMMERCIAL NAT'L BANK

vs.

LA. TAX COMMISSION et al.

JUDGMENT

Filed Sept. 26, 1931. D. D. Pyburn, Dy. Clerk.

In this case, after due trial on the merits, the law and the evidence being in favor of plaintiff and against the defendants,

It is ordered, adjudged, and decreed that the assessment for 1930 on the tax roll of Caddo Parish, Louisiana, of plaintiff's property and shares, except real estate, be and the same is hereby annulled, and T. R. Hughes, Sheriff and Ex-Officio Tax Collector of Caddo Parish, Louisiana, is hereby enjoined and restrained from collecting or attempting to collect taxes thereon.

Done, read, and signed in open court on this the 26th day of September, 1931.

E. P. MILLS,
District Judge.

No. of Suit: 56125

AMERICAN NAT'L BANK

vs.

LA. TAX COMMISSION et al.

JUDGMENT

Filed Sept. 26, 1931. D. D. Pyburn, Dy. Clerk.

In this case, after due trial on the merits, the law and the evidence being in favor of plaintiff and against the defendant,

It is ordered, adjudged, and decreed that the assessment for 1930 on the tax roll of Caddo Parish, Louisiana, of plaintiff's property and shares, except real estate, be and the same is hereby annulled, and T. R. Hughes, Sheriff and Ex-Officio Tax Collector of Caddo Parish, Louisiana, is hereby enjoined and restrained from collecting or attempting to collect taxes thereon.

Done, read, and signed in open court on this the 26th day of September, 1931.

E. P. MILLS,
District Judge.

SUPREME COURT OF LOUISIANA, MONDAY, MAY 23, 1932

No. 31528

FIRST NATIONAL BANK et al.

vs.

LOUISIANA TAX COMMISSION et al.

Appeal from the First District Court for the Parish of Caddo

E. P. Mills, Judge

OPINION OF THE COURT

O'NIELL, C. J.:

The First National Bank, the Commercial National Bank and the American National Bank, being all of the national banks in Shreveport, brought this suit to avoid payment of the taxes levied on their capital stock, for the year 1930, under the provisions of Act 14 of 1917, as amended by Act 116 of 1922 and Act 221 of 1928. The complaint has reference to the statute itself, the contention being that the taxes imposed on

the shares of bank stock are at a greater rate than the rate of taxes assessed upon other moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks. If the complaint is well founded the statute is violative of one of the conditions on which the Congress, by Sec. 5219, U. S. R. S., has given the states permission to levy taxes on shares of stock in national banks. The Commercial National Bank paid the city taxes before filing the suit, and, alleging that the payment was made in error, prayed that the city should be ordered to refund the taxes so paid. That part of the Commercial National Bank's demand was dismissed on an exception of no cause of action; and from that decision the bank appealed. See Commercial National Bank *v.* Louisiana Tax Commission et al., No. 31,233. The three suits were consolidated for the purpose of the trial, which resulted in a judgment in favor of the banks, annulling the taxes, as being violative of Sec. 5219, U. S. R. S. The defendants, Louisiana Tax Commission, Police Jury, Assessor, Tax Collector, and City of Shreveport, have appealed from the decision.

The plaintiffs contend that the method of levying taxes on national bank stock violates not only the provision in Sec. 5219, U. S. R. S., Sec. 548 of Title 12, U. S. C. A., but also the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and the clause in Section 1 of Article X of the Constitution of Louisiana, requiring that "all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax".

Act 14 of 1917, as amended by Act 116 of 1922 and by Act 221 of 1928, provides not only for the levying of taxes on shares of stock of *national* banks, but provides, indiscriminately, "for the levying of an annual assessment on the shares of stock and real estate of all

banks, banking companies, firms, associations or corporations engaged in the banking business, chartered under the laws of the State of Louisiana, or the United States, doing business in the State of Louisiana." It is conceded, therefore, that, if the method of taxing, complained of in this suit, is violative of Sec. 5219, U. S. R. S., with regard to national banks, it is violative also of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and the clause in the State Constitution requiring equality of taxation, with regard to state banks, notwithstanding they are not charging discrimination in favor of moneyed capital in the hands of individual citizens coming into competition with the business of the banks.

The state levies taxes on every other corporation, other than those engaged in the banking business, by assessing the property of the corporation in the name of the corporation, just as the property of an individual is assessed in his name. But, to avoid double taxation, the capital stock of corporations other than those engaged in the banking business is not assessed for taxes. On the other hand, the capital stock of corporations engaged in the banking business is assessed for taxes, at the book value of the stock, less the value of the real estate owned by the bank, which real estate is also assessed for taxes; but no other property of such corporations is assessed for taxes.

The complaint of the plaintiffs in this suit, stated broadly, is that, by assessing the capital stock of banks instead of assessing their property, and by assessing the property of corporations that compete with the banks in some parts of their business, instead of assessing their capital stock, the state is discriminating againt the banks, in that they do not have the benefit of the exemptions from taxation, provided for in the constitution, and the corporations competing with

them in a part of their business do have the benefit of such exemptions. The plaintiffs have reference, particularly, to the exemptions (in Sec. 4 of Art. X) of cash on hand or on deposit; loans or other obligations secured by mortgage on property located exclusively in the state, and the notes or other evidences thereof; loans by life insurance companies to policyholders, secured only by their policies; loans by homestead associations to their members, secured only by the stock of such associations; debts due for merchandise or articles of commerce or for services; and obligations of the state or its political subdivisions. The plaintiffs contend also that there is a discrimination against them in that, in the assessment of credits, meaning, particularly, promissory notes, bills and accounts receivable, *not exempt from taxation*, a deduction is made of bills and accounts payable, *not exempt from taxation* as the property of the party to whom they are payable. Act 24 of 1918. The purpose of that is to avoid double taxation. New Orleans Securities Co. *v.* City of New Orleans, 173 La. 1097, 139 So. 635. That is the purpose also of the exemption of promissory notes or other evidences of debt secured by mortgage on property which bears its just proportion of taxes, and debts due for merchandise or articles of commerce.

At first thought it seems that, if the capital stock, instead of the property, of a corporation is taxed, as in the case of corporations engaged in the banking business, the stockholders do not have the benefit of the exemptions which we have mentioned, or the benefit of the right to offset their bills and accounts receivable by the bills and accounts payable, *not exempt from taxation*. But that is not true. As a matter of mathematics, it is certain that there is no discrimination, in that respect, against the banking corporations, whose

capital stock is assessed for taxes, or in favor of the corporations whose property is assessed for taxes. The reason why there is no discrimination, in that respect, is that the book value of bank stock, which value (after deducting the value of the bank's real estate) is the value at which the stock is assessed for taxes, is the difference between the value of the bank's assets and the amount of its liabilities. In other words in computing the value at which bank stock must be assessed, all of the bank's bills and accounts payable are deducted. It is true that, among the assets that go to make up the book value of bank stock, there are included bills and accounts receivable which, if they belonged to a corporation not engaged in the banking business, might be exempt from taxation; but, among the liabilities which go to lessen the book value of bank stock, are all of the bills and accounts payable, whether exempt or not exempt from taxation; whereas, in the assessment of the bills and accounts receivable belonging to all other corporations, except those engaged in the banking business, the only bills or accounts payable that are deducted from the amount of the bills and accounts receivable are those that are not exempt from taxation, as the property of those to whom they are payable. It is impossible, therefore, for the exemptions from taxation, which the plaintiffs complain of, to operate as a discrimination against the stockholders of corporations engaged in the banking business, or in favor of the stockholders of corporations competing for a part of the banking business, merely because the banks are taxed by the assessment of their capital stock and the other corporations are taxed directly by the assessment of their property.

The restriction put upon the right of the States to tax shares of stock in national banks, by Sec. 5219 U. S. R. S., is expressed thus:

"In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks; provided, that bonds, notes or other evidences of indebtedness in the hands of individual citizens not engaged in the banking or investment business, and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital, within the meaning of this section."

The proviso, declaring that bonds, notes or other evidences of debt in the hands of individual citizens not engaged in the banking or investment business, and representing merely personal investments not made in competition with such business, should not be deemed moneyed capital, within the meaning of the section, was added by an amendment made in 1925 (Comp. St. Supp. 1925 ≠ 9784) to make the law conform with the interpretation which the Supreme Court of the United States had placed upon it in Mercantile Bank *v.* New York, 121 U. S. 138, 30 L. Ed. 895, 7 S. Ct. 826.

The complaint that the owners of bank stock are discriminated against because the method of assessment does not admit of offsetting bills and accounts receivable by bills and accounts payable was urged in People of New York ex Rel. Amoskeag Savings Bank *v.* Purdy, Commissioner, 231 U. S. 373, 58 L. Ed. 274, with regard to the same method of taxation that is complained of here; and the court rejected the complaint, thus:

"According to this practical test, it seems to us that the scheme adopted by the state of New York for taxing shares in national banks cannot upon this record be denounced as violative of the limitations prescribed

by #5219, Rev. Stat. (U. S. Comp. Stat. 1901, p. 3502). The holders of shares in state banks are subjected to precisely the same taxation, and with respect to other competitive institutions, such as trust companies, the franchise taxes imposed upon them apparently result in a substantially similar burden upon the shareholder. Nor is there any discrimination in favor of savings banks. With respect to individual bankers, there is a difference, they being apparently subject to the local rate of taxation, and entitled to the privilege of deduction for personal debts; but, as they are taxable upon the amount of the capital, invested in the banking business, which is normally only such as remains after the deduction of debts, it is not plain that they possess any valuable privilege of reducing the tax assessment by deducting debts. Foreign bankers are separately treated, for reasons sufficiently obvious; but no criticism is made of this. If there be other forms of 'moneyed capital in the hands of individual citizens' of the state employed in a banking or quasi-banking business in competition with the national banks, and which are subjected to a more favorable rule of taxation, our attention is not called to them. Moreover, we agree with what was said by the court of appeals of New York in the Feitner Case (191 N. Y. 88, 96, 83 N. E. 592) that 'the State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality, or unfriendly discrimination is inflicted upon them.' "

The record here discloses that the plaintiffs are not really concerned with the tax exemption complained of in their petition. The exemption of cash on hand or on deposit, for example, is not a discrimination against the banks, because cash on hand or on deposit is idle capital, and not moneyed capital coming into

competition with the business of national banks. The exemption of loans secured by mortgages is not a discrimination against national banks, because, as shown by the testimony of their officers, they consistently avoid such loans. The exemption of loans made by life insurance companies to their policyholders and secured by their policies is a matter of no concern to the banks, not only because, in the very nature of things, they cannot make such loans on the same terms or basis, but also because the State has no right to tax loans made by insurance companies domiciled in other States, and, as far as the record shows, there are no loans made by life insurance companies domiciled in this State. The exemption of loans made by homestead associations to their members, secured only by the stock of such associations, was found by the district judge to be not a discrimination against the banks, or their shareholders. That subject will be discussed hereafter with reference to the several institutions which the plaintiffs say are their competitors. The exemption of debts (meaning credits) due for merchandise or articles of commerce, which are supposed to have borne their just burden of taxation, is made for the purpose of avoiding double taxation, and is a matter which does not concern the banks because they do not deal in merchandise or such articles of commerce as the exemption has reference to. The exemption of the obligations of the State and its political subdivisions is also a matter of public policy, which does not concern the banks because they do not take such securities as a matter of investment but only for immediate sale.

The institutions which the plaintiffs contend have moneyed capital invested in competition with the business of national banks are the homestead associations, Morris Plan Banks and Morgan Plan banks, small loan companies licensed under Act 7 of the Extra

Session of 1928, finance and securities companies licensed under Act 221 of 1926 and lending money on chattel mortgages, principally on automobiles, pawnbrokers, life insurance companies, real estate mortgage investment companies, and bond investment brokers.

Homestead associations, or building and loan associations, in Louisiana, are regarded as quasi-public institutions, not working for profit but to enable wage earners to own their homes, and therefore entitled to special favors in the way of tax exemptions, under a well settled public policy, which prevails also in other states. Mayre *v.* Pierson, 171 La. 1077, 133 So. 163. Therefore, even if the tax system complained by the plaintiffs did operate as a discrimination in favor of homestead associations, that would not be a just cause for complaint. In Louisville Gas & Electric Co. *v.* Coleman, 277 U. S. 40, 72 L. Ed. 775, it was said:

"The exemption of building and loan associations from the operation of the tax is a different matter. The equal protection clause of the 14th Amendment does not preclude a state in imposing taxes from making exemptions, provided the power is not exercised arbitrarily. It may exempt the property of churches, charitable institutions, and the like; and it does not admit of fair doubt that, under the circumstances disclosed by the opinion of the court below in the Middendorf Case, it has lawfully exempted building and loan associations. That Court points out that a building and loan association under the Kentucky statutes must receive payments from members only and make loans to members only, in pursuance of a plan set forth. Money accummulated is to be loaned to members according to a rule of priority. The essential principle of such an association is mutuality. The purpose of the statute, the court below says, was to provide the members of the associations with the means of borrow-

ing money for the acquisition of homes, in recognition of the duty of the state to encourage the acquisition of homes by its citizens. Such associations are also placed by the state statute in a separate class for purposes of ad valorem taxation. It is made clear by the lower court that the purpose of the exemption was to enable these associations, by relieving them of a burden, more completely to carry out the quasi public purpose which the legislature designed in providing for their creation."

The opinion which has been quoted from more often perhaps that any other on this subject was rendered in Mercantile National Bank of New York *v.* Mayor, etc., of New York, 121 U. S. 138, 30 L. Ed. 895. The bank's complaint was that the New York tax statute exempted trust companies, mutual savings banks and life insurance companies. The question was whether those exemptions violated the condition in Sec. 5219, U. S. R. S., and the conclusion was that, although in fact the total amount of the moneyed capital which was thus exempted from taxation greatly exceeded the amount of capital employed by all of the national banks in New York, there was no violation of Sec. 5219, because the exemptions applied either to capital that was not really in competition with the national banks' capital, or to capital which the policy of the state reasonably required should be exempted from taxation. We excerpt here expressions in the opinion which are particularly appropriate, viz:

"According to the stipulation in this case, the deposits in such banks amount to $437,107,501, with an accumulated surplus of $68,669,001. It cannot be denied that these deposits constitute moneyed capital in the hands of individuals, within the terms of any definition which can be given to that phrase; but we are

equally clear that they are not within the meaning of the Act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. * * * We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt'—Hepburn *v.* School Directors, 23 Wall. 480 (*supra*)—and that 'the Act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the Legislature chose to do so.' Adams *v.* Nashville, 95 U. S. 19 (24:369). The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against the investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the state exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

That decision has been followed in cases where national banks complained of tax exemptions being granted to savings banks. In Davenport National Bank *v.* Board of Equalization, 123 U. S. 83, 31 L. Ed. 94, it was said:

"While deposits in savings banks constitute moneyed capital in the hands of individuals, yet there are not within the meaning of the Act of Congress in such a sense as to require that because they are exempted from taxation the shares of stock in national banks must also be exempted."

In Bank of Redemption *v.* Boston, 125 U. S. 60, 31 L. Ed. 693, it was said again, with reference to tax exemptions granted to Savings Banks, that Sec. 5219 U. S. R. S. did not interfere with the right of a state, as a matter of public policy, to exempt from taxation institutions that were reasonably entitled to the exemption, even though they might employ capital in competition with national banks. Referring to the savings banks, the court said:

"They are substantially institutions under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rules as declared in the cases heretofore decided, which forecloses further discussion as to the present point in this case."

Again, in Palmer *v.* McMahon, 133 U. S. 660, 33 L. Ed. 772, it was said:

"Because a state statute does not provide for the taxation of shares in corporations other than banks, it does not follow that the shareholders in national banks are discriminated against:

"The mode of taxation adopted by the State of New York in reference to its corporations, excluding trust companies and savings banks, does not operate in such a way as to make the tax assessed upon shares of national banks at a greater rate than that imposed upon

other moneyed capital in the hands of individual citizens."

First National Bank of Wellington *v.* Chapman, 173 U. S. 205, 43 L. Ed. 669, is directly in point, not only on the proposition that Sec. 5219 U. S. R. S. does not interfere with the right of a state to grant exemptions from taxation as a matter of public policy, but also on the proposition that the privilege allowed to corporations whose property is assessed for taxation to deduct their debts from their credits is not a discrimination against the stockholders of national banks, whose shares are assessed for taxes. Mr. Justice Peckham, for the court, said:

"The complaint is founded upon the allegation that the owners of what is termed credits in the law of Ohio (Rev. Stat. #2730) are permitted to deduct certain kinds of their debts from the total amount of their credits, and such owners are assessed upon the balance only while no such right is given to owners of shares in national banks.

* * * * * * *

"The main purpose of Congress in fixing limits to state taxation on investments in national banks was to render it impossible for the state in levying such a tax to create and fix an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy. 'Moneyed capital' does not mean all capital the value of which is measured in terms of money; neither does it necessarily include all forms of investments in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining com-

panies, manufacturing companies, and other corporations are represented by certificates showing that the owner is entitled to an interest expressed in money value in the entire capital and property of the corporation; but the property of the corporation which constitutes this invested capital may consist mainly of real and personal property, which, in the hands of individuals, none would think of calling moneyed capital; and its business may not consist in any kind of dealing in money or commercial representatives of money. This statement is taken from Mercantile Bank *v.* New York, 121 U. S. 138, 155 (30:895, 901). That case has been cited with approval many times, especially in First National Bank of Garnett *v.* Ayers, 160 U. S. 660 (40:573), and in Aberdine Bank *v.* Shealis County, 166 U. S. 440 (41:1069).

"The result seems to be that the term 'moneyed capital' as used in the Federal statute does not include capital which does not come into competition with the business of national banks, and that exemptions from taxation, however large, such as deposits in savings banks or of moneys belonging to charitable institutions, which are exempted for reasons of public policy, and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal statute."

It was admitted on the trial of this case that the investments made by individuals who habitually invested their own funds, secured by mortgages on lands in Caddo parish, of which Shreveport is the parish seat, amounted to more than $3,000,000 in 1930. The testimony on the subject shows that those loans were, comparatively, long time loans, ranging from one to five years, and that the national banks would never handle such loans. Besides, the admission leaves the inference that the mortgage notes referred to were in

the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the banking business. First National Bank *v.* Anderson, 269 U. S. 350, 70 L. Ed. 304.

The testimony leaves no doubt that there has been no competition with the national banks on the part of any concern lending money on mortgages on real estate, because the national banks will never handle such loans. In fact two of the investment companies lending money on mortgages on lands in the parish of Caddo were organized by the owners, respectively, of two of the national banks that are the plaintiffs in this case; and the purpose of organizing the investment companies was to handle loans secured by mortgages, which the national banks were either not willing or not authorized to handle.

The small loan companies, complained of in this suit, are those that make only loans not exceeding $300, and that are allowed to charge interest at the rate of 3½ per cent per month. The loans, as a rule, are secured by chattel mortgages. The testimony of the officers of these companies, and of the officers of the national banks, leaves no doubt that these small loan companies are not competitors of the national banks. The business of the small loan companies, the same as that of the pawnbrokers, is not in any class of business done by national banks, and is not in competition with any of the business done by national banks.

The business of the Morris Plan Company and that of the Morgan Plan Company is the making of small loans, averaging $180, payable out of the borrower's salary. The testimony of the bank officials shows that the business of such companies is not in competition with the business done or desired by the national banks. And that is true also of the so-called finance and securities companies, whose business is to lend

money on long series of notes given for the price of automobiles, refrigerators, radios, etc., and secured by chattel mortgages. The national banks would never handle such business. They prefer to—and do in fact—lend to such companies.

The loans made by life insurance companies, domiciled in other states, on mortgages on lands in Caddo parish, amounted to $662,200 in the two years, 1929 and 1930; but they were longer time loans than a national bank would make. And that is true of the two mortgage investment companies, and bond investment brokers, that were doing business in Shreveport in 1930. Their business was such as the national banks would never handle or desire to handle, according to the testimony of the officers of the banks, as well as the testimony of the officers of the investment companies.

The plaintiffs contend that the method of taxing the shares of stock, instead of the property, of corporations engaged in the banking business discriminates against them because the legislature, by Act 163 of 1924, p. 263, undertook to require that the bonds of any of the states, or of any of their political subdivisions, bonds of railroads or other public utilities, of manufacturing or industrial corporations, and mortgage bonds, not exempt from taxation, should be assessed at 10 per cent of their market value. The statute is so palpably violative of the constitutional requirement that all property that is subject to taxation shall be assessed at its actual cash value, that it has never been enforced. City of New Orleans *v.* Peoples Insurance Co., 27 La. Ann. 519; Morrison *v.* Larkin, 26 La. Ann. 699; First National Bank *v.* Board of Reviewers, 41 La. Ann. 188; Grand Lodge *v.* City of New Orleans, 44 La. Ann. 659; Southland Investment Co. *v.* Jeter, 171 La. 106. Mr. Jeter is the tax assessor for Caddo parish; and he testified in this

case that he had not been able to find in the parish any of the securities referred to in Act 163 of 1924. It is certain, therefore, that the statute has not had any effect upon the business of the plaintiffs.

The attorneys for the plaintiffs lay great stress upon the fact that the total amount of the assessments of credits, in 1930, in the Parish of Caddo, was less than $60,000, and in the state less than $3,000,000. No evidence, however, was offered to show that any moneyed capital invested in credits, not exempt from taxation, was escaping taxation. Some credits are exempt from taxation, to avoid double taxation, and the credits that are not exempt from taxation are offset by the owner's debts, not exempt from taxation as the property of the persons to whom they are due. It is plain, therefore, that any corporation whose assets consist entirely of credits must be assessed at its net worth; but such a corporation would not be assessed for any greater sum if its capital stock, instead of its property, were assessed for taxes.

The decision of the district judge in this case seems to be founded upon the idea that Section 5219 is violated if there is a discrimination in favor of moneyed capital invested in any line of business that a national bank may engage in without violating its charter, even though the favored investment is in a line of business that the national banks do not and never will desire to engage in. On the contrary, we consider it well settled that the discrimination is not material, or violative of the Federal statute, unless it favors moneyed capital invested in actual and substantial competition with the capital invested in the shares of national banks; that is to say, the discrimination is of no importance unless it is in favor of moneyed capital invested in a line of business which the national banks engage in, or which they might engage in but for the competition. Mercantile National Bank *v.*

New York, 121 U. S. 138, 30 L. Ed. 895; Palmer *v.* McMahon, 133 U. S. 660, 33 L. Ed. 772; First National Bank *v.* Chehalis County, 166 U. S. 440, 41 L. Ed. 1069; National Bank of Commerce *v.* Seattle, 166 U. S. 463, 41 L. Ed. 1079; Georgetown National Bank *v.* McFarland, 273 U. S. 568, 71 L. Ed. 779. Any other rule would be not in line with the fundamental rule that one who pleads that a burden of taxation under a state statute is violative of the Constitution of the United States must show not only that the state statute might, in its operation, violate the constitutional provision invoked, but that the statute does in fact, as applied to his case, violate the constitutional provision. Board of Supervisors *v.* Stanley, 105 U. S. 385, 26 L. Ed. 1044; Citizens National Bank *v.* Kentucky, 217 U. S. 443, 54 L. Ed. 832; Keeney *v.* Comptroller of New York, 222 U. S. 525, 56 L. Ed. 299; Darnell *v.* Indiana, 226 U. S. 388, 57 L. Ed. 267; Strauss *v.* Foxworth, 231 U. S. 162, 58 L. Ed. 168; Pullman Co. *v.* Knott, 235 U. S. 23, 59 L. Ed. 110; Oliver Iron Mining Co. *v.* Lord, 262 U. S. 172, 67 L. Ed. 935; Roberts & Schaefer Co. *v.* Emmerson, 271 U. S. 50, 70 L. Ed. 827.

The decision of the district judge in this case was based largely upon certain expressions in the opinion delivered by Chief Justice Hiscock of the Court of Appeals of New York in People *ex rel.* Pratt *v.* Goldfogle, 242 N. Y. 277, 151 N. E. 452, and upon certain expressions in the opinion rendered in First National Bank *v.* City of Hartford, 273 U. S. 548, 71 L. Ed. 767.

In the Goldfogle Case the relator challenged the constitutionality of a statute of New York (Laws of 1923, c. 897) levying a tax upon "moneyed capital * * * coming into competition with the business of national banks." The purpose of the statute was to comply with Sec. 5219 U. S. R. S., as amended in 1923, and to comply with the ruling in People *ex rel.* Hanover National Bank *v.* Goldfogle, 234 N. Y. 345, 137

N. E. 611. The relator set up several grounds for the plea that the statute was unconstitutional, the principal ground being that the description of the property taxed and to be assessed was indefinite. The court ruled that the statute was not unconstitutional, and, as to the complaint of indefiniteness of description, said that moneyed capital was in competition with national banks when it was employed in such operations as were commonly conducted by such banks. Syllabus No. 6. It was in that connection that Chief Justice Hiscock said:

"This purpose seems to us to require an interpretation which protects generally the business which national banks are authorized to carry on and may at any time engage in and not the business represented by actual transactions occurring at any particular time or place. Certainly the statute would utterly fail of its purpose if, as the result of discriminatory taxation, a national bank had been driven or kept out of a particular line of business in some locality by other moneyed capital and it then could be said that there was no competition by the latter with the former requiring equality of taxation."

The decision in the Goldfogle Case, therefore, is not authority for the decision rendered by the district judge in this case.

Some of the expressions used in the Hartford Case, as in Minnesota *v.* First National Bank, 273 U. S. 561, 71 L. Ed. 774, standing alone, might give the impression that the exemption from taxation of promissory notes secured by mortgage on real estate in Louisiana is a discrimination against the owners of shares of stock in national banks in this state. But the expressions have no such meaning when considered in connection with the facts of the case. For example, the court found these facts in the Hartford Case:

"On the trial, plaintiff called numerous witnesses who gave testimony, uncontradicted by defendant, tending to show the nature and extent of various classes of moneyed capital in the hands of individuals in the state and the nature of its employment in competition with the business carried on by national banks. There are real estate firms engaged in lending money to individuals in the vicinity of plaintiff's banking house, the amount thus loaned amounting annually from $250,000 to $300,000. According to the testimony the making of these loans affords the same competition to plaintiff as loans made by banks. * * * Neither the capital employed in these various enterprises by individuals or corporations, so far as invested in the credits, nor the shares held by investors in such corporations is subjected to the *ad valorem* tax.

* * * * * * *

"We do not conceive that in order to establish the fact of competition it is necessary to show that national banks and competing investors solicit the same customers for the same loans or investments. It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are substantial in amount."

That is a long way from saying that it is enough if the investments alleged to be favored are in a class of business which a national bank might engage in without violating its charter, even though it be a class of business which the national banks never engage in and have no desire to engage in.

If the Federal statute forbids the states to encourage, by tax exemption or favoritism, investments in

any line of business that national banks are authorized to engage in, even though they do not and will not engage in that line of business, the courts have wasted much time in deciding the cases before them, in determining whether in fact there was competition between the favored investments and the investments actually made or desired to be made by the national banks. What a national bank actually does is a question of fact, but what it is authorized to do is a question of law.

First National Bank *v.* County of Chehalis, 166 U. S. 440, 41 L. Ed. 1069, contains a review of all of the cases on the subject theretofore decided, and an extensive quotation from Mercantile National Bank *v.* New York, *supra,* which is there declared to settle the law on the subject. The Chehalis Case holds:

"The omission from taxation of investments by individual citizens in loans and securities, and of moneyed capital invested in stocks and bonds, does not make the taxation of the shares of capital stock in a national bank invalid as an unfair discrimination against the latter, unless it is shown that the money invested in the property which is not assessed comes into competition with the business of national banks.

"An allegation that investments were 'taxable capital'. without describing their character, is an averment in the nature of a legal conclusion."

To the same effect were the rulings in National Bank of Commerce *v.* Seattle, 166 U. S. 442, 41 L. Ed. 1073; First National Bank *v.* Chapman, 173 U. S. 213, 43 L. Ed. 673; and Des Moines National Bank *v.* Fairweather, 263 U. S. 102, 68 L. Ed. 191.

In First National Bank *v.* City of Hartford, on which the district judge rested his decision in this case, Mr. Justice Stone, for the court, referred to First National Bank *v.* Anderson (70 L. Ed. 303, 46 Sup. Ct.

135) for a definition of "other moneyed capital" as used in Sec. 5219, U. S. R. S., and said:

"The question thus raised involves considerations both of facts and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the State and the relation of its employment, in point of competition, to the business of plaintiff and other national banks. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned are moneyed capital and competition within the spirit and purpose of the statute."

Mr. Justice Stone handed down the opinion also in Georgetown National Bank *v.* McFarland, 273 U. S. 569, 71 L. Ed. 779, and there the learned jurist demonstrated, by his review of the facts of the case, that if the facts in the Hartford Case had been like they are here the decision would have gone the other way. The Court of Appeals of Kentucky went even more into detail in finding the facts in Georgetown National Bank *v.* McFarland (or vice versa), 270 S. W. 997, thus:

"The moneyed capital of individuals is invested in notes given for the purchase money of land or secured by a mortgage on land and running for a longer time than banks are willing to lend money for. It is not shown by anybody that any appreciable amount of money held by individuals is used in short time loans, such as the banks make, and, this being true, the capital invested in land notes and the like does not come in competition with the national banks, for they do not handle this character of paper. The facts shown by

the record warrant the conclusion that no material part of the capital held by the individuals is so invested as to come in competition with the national banks, and on the record we so hold."

In Merchants National Bank *v.* Richmond, 256 U. S. 635, 65 L. Ed. 1135, cited by counsel for plaintiffs, the Supreme Court of Appeals of Virginia held that, inasmuch as the state banks were taxed at the same rate that national banks were taxed at, there was no violation of the Federal statute, even though other moneyed capital invested in competition with the national banks was taxed at a lower rate. That ruling, of course, was reversed.

In Montana National Bank *v.* Yellowstone County, 276 U. S. 499, 72 L. Ed. 673, the state statute taxing national banks was declared invalid because of a discrimination in favor of the state banks.

We are referred to a very recent decision, Iowa Des Moines National Bank *v.* Bennett, and Central State Bank *v.* Bennett, 76 L. Ed. —, No. 4 Adv. Opin. 164; but we do not find the decision appropriate to this case. A tax collected from a national bank was ordered refunded, in so far as it was a discrimination in violation of Sec. 5219 U. S. R. S., even though the collection was made in violation of the state statute.

Our conclusion is that there is no discrimination against the plaintiffs in this case.

The judgments appealed from are annulled and the demands of the plaintiffs are rejected at their cost.

Rogers, J., takes no part.

[Endorsed:] 31528. First National Bank *v.* La. Tax Commission.

SUPREME COURT OF LOUISIANA

No. 31528

FIRST NATIONAL BANK OF SHREVEPORT et al.,
Plaintiffs-Appellees,

vs.

LOUISIANA TAX COMMISSION et al., Defendants-Appellants

PETITION AND ORDER FOR APPEAL TO SUPREME COURT OF THE UNITED STATES AND ASSIGNMENT OF ERRORS

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of the First National Bank, the Commercial National Bank and the American National Bank, all of Shreveport, Louisiana, appellees in the above entitled cause, for themselves and in behalf of their respective shareholders, represents:

I

Petitioners filed separate suits in the First District Court of Caddo Parish, Louisiana, to annul and cancel the assessment for taxation of their shares of stock and personal property. Said suits were consolidated for trial and appeal and on trial the District Court rendered judgment in favor of petitioners.

II

An appeal was taken to the Supreme Court of Louisiana, which is the court of last resort in the State of Louisiana in such cases, and on May 23, 1932, the Supreme Court reversed the decision of the First District Court and dismissed the complaint. Petitioners applied timely for a rehearing and on June 20, 1932, the Supreme Court modified its judgment by reserving to petitioners any right they may have to reduce or annul the assessment of their property, except upon

the complaint that taxing their shares of stock violates Section 5219 of the Revised Statutes of the United States, and denied a rehearing.

III

In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground that it is repugnant to the constitution and laws of the United States and the decision is in favor of its validity in that petitioners' complain that their shares of stock are assessed under Act 14 of the General Assembly of Louisiana of 1917, as amended by Act 116 of 1922 and Act 221 of 1928, at a greater rate than is imposed on other monied capital employed in competition with petitioners, contrary to Section 5219 of the United States Revised Statutes and the equal protection clause in the first section of the Fourteenth Amendment of the Constitution of the United States. And petitioners also complain that their personal property is assessed for taxes without authority of law and in violation of said statutory and constitutional provisions.

IV

Petitioners file herewith an assignment of errors.

Wherefore petitioners pray for the allowance of an appeal from the Supreme Court of the State of Louisiana to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Louisiana may be examined and reversed, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, be sent to the Supreme Court of the United States as provided by law.

Petitioners pray that the appeal be a supersedeas, for an order touching the security to be given, and for

approval of the bond or bonds that may be furnished in accordance therewith.

J. P. WALLACE,
LEWELL C. BUTLER,
BARKSDALE, BULLOCK, WARREN, CLARK & VAN HOOK,
THATCHER, BROWNE, PORTEOUS & MYERS,
Attorneys for Petitioners.

ORDER

Considering the foregoing petition and the assignment of errors filed therewith, and the record in the above entitled cause; it is.

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana as prayed for, and that the Clerk of the Supreme Court of the State of Louisiana prepare and certify a transcript of the record and proceedings in said cause and transmit the same to the Supreme Court of the United States within 30 days from the date hereof.

It is further ordered that the appellants give bond respectively, viz: First National Bank in the sum of $1,000, Commercial National Bank in the sum of $1,000, and American National Bank in the sum of $500, conditioned that each of said appellants shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good.

And each of said appellants having presented bond in the sum required, as aforesaid, with good and sufficient security, it is

Ordered that said bonds be and they are hereby approved and that the appeal herein operate as a supersedeas.

New Orleans, Louisiana, this 18th day of July, 1932.

[Seal Supreme Court of the State of Louisiana.]

CHARLES A. O'NIELL,
Chief Justice of the Supreme Court
of the State of Louisiana.

SUPREME COURT OF LOUISIANA

No. 31528

FIRST NATIONAL BANK OF SHREVEPORT et al.,
Plaintiffs-Appellees,
vs.
LOUISIANA TAX COMMISSION et al., Defendants-Appellants

ASSIGNMENT OF ERRORS

The First National Bank, the Commercial National Bank and the American National Bank, all of Shreveport, Louisiana, plaintiffs-appellees, for themselves and in behalf of their respective shareholders, assign the following errors in the record and proceedings in this case:

The Supreme Court of Louisiana erred:

(1) In holding that Act 14 of the General Assembly of Louisiana of 1917, as amended by Act 116 of 1922 and Act 221 of 1928, is not repugnant to section 5219 of the United States Revised Statutes, U. S. C. A. Title 12, section 548, or the equal protection clause of the first section of the Fourteenth Amendment of the Constitution of the United States.

(2) In refusing to hold that the taxation of personal property of national banks is unauthorized, invalid and violative of the above statutory and constitutional provisions.

(3) In holding that no substantial inequality results from taxing bank stock because other corpora-

tions, firms and individuals, whose capital is not taxed as such, are assessed on property in lieu of capital; whereas, the proof and admissions herein show that other corporations, firms and individuals who employ substantial capital in competition with the business of national banks are not taxed in fact equally with national banks and their shareholders.

(4) In holding that no discrimination results from assessing the capital, surplus and undivided profits of national banks, although the shareholders are not given the benefit of deductions allowable under Act 24 of the General Assembly of Louisiana of 1918 and actually allowed to others who employ substantial capital in competition with the business of national banks.

(5) In holding that no discrimination results from assessing the capital, surplus and undivided profits of national banks, although neither the banks nor their shareholders are given the benefit of exemptions allowable under the State Constitution, article X, section 4, and actually allowed to others who employ substantial capital in competition with the business of national banks.

(6) In holding that Act 163 of the Legislature of 1924 is not discriminatory against shareholders in national banks; that it is violative of the constitution of the State; that State authorities charged with its enforcement may avail themselves of its unconstitutionality in this suit; and that, because it violates the State Constitution, the fact that it is discriminatory in terms and in practice is not material.

(7) In holding that complaints must show competition with business in which they are actually engaged, and that proof of competition with business in which national banks normally engage is not sufficient.

(8) In holding that buying notes or lending money on real estate or chattel mortgages is not competition with complainants.

(9) In holding that capital employed in the business of building and loan associations, Morris plan banks, Morgan plan banks, small loan companies licensed under Act 7 of the Extra Session of the Legislature of 1928, finance and securities company licensees under Act 221 of 1926, pawnbrokers, life insurance companies lending money on real estate mortgages, mortgage investment companies, bond and securities investment houses, cotton factors, brokers and individuals buying notes or lending money on mortgage security is not in competition with the business of national banks.

(10) In finding that the business of complainants does not embrace buying notes or lending money on real estate mortgages.

(11) In finding upon the facts that no substantial competition with the business of national banks is shown.

(12) In reversing the judgment of the District Court.

For which errors they pray that the judgment be reviewed on appeal to the Supreme Court of the United States, that the decision of the Supreme Court of the State of Louisiana be reversed, and that judgment be rendered in their favor.

J. P. WALLACE,
LEWELL C. BUTLER,
BARKSDALE, BULLOCK, WARREN, CLARK & VAN HOOK,
THATCHER, BROWNE, PORTEOUS, & MYERS,
Attorneys for Appellants.

[Endorsed:] Supreme Court of Louisiana. No. 31528. First National Bank of Shreveport et al., plaintiffs-appellees, *vs.* Louisiana Tax Commission et al., Defendants-appellants. Petition and order for appeal to the Supreme Court of the United States and assignment of errors. Barksdale, Bullock, Warren, Clark & Van Hook. Filed July 18, 1932. Paul E. Mortimer, Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1932

FIRST NATIONAL BANK OF SHREVEPORT, LOUISIANA; COMMERCIAL NATIONAL BANK OF SHREVEPORT, LOUISIANA; AMERICAN NATIONAL BANK OF SHREVEPORT, LOUISIANA, Appellants,

vs.

LOUISIANA TAX COMMISSION, T. R. HUGHES, Sheriff and ex Officio Tax Collector of Caddo Parish, Louisiana; John W. A. Jeter, Assessor of Caddo Parish, Louisiana, and City of Shreveport, Louisiana, Appellees.

CITATION AND ACKNOWLEDGMENT OF SERVICE THEREON

UNITED STATES OF AMERICA, *ss:*

To Louisiana Tax Commission, T. R. Hughes, sheriff and ex officio tax collector of Caddo Parish, Louisiana; John W. A. Jeter, assessor of Caddo Parish, Louisiana, and City of Shreveport, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within 30 days from the date of the service of this citation pursuant to the allowance of an appeal by the Chief Justice of the Supreme Court of

Louisiana, from the judgment of the Supreme Court of the State of Louisiana to the Supreme Court of the United States, in a suit wherein First National Bank, Commercial National Bank and American National Bank, all of Shreveport, Louisiana, are plaintiffs and appellants, and the Louisiana Tax Commission, T. R. Hughes, Sheriff and Ex-Officio Tax Collector of Caddo Parish, Louisiana, John W. A. Jeter, Assessor of Caddo Parish, Louisiana, and the City of Shreveport, Louisiana, are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the hand and seal of the Honorable Charles A. O'Niell, the Chief Justice of the Supreme Court of Louisiana, this the 18th day of July, 1932.

(Sgd.) CHARLES A. O'NIELL,
Chief Justice of the Supreme Court of Louisiana.

Attest:

(Sgd.) PAUL E. MORTIMER,
[SEAL.] *Clerk of the Supreme Court of Louisiana.*

Service of the foregoing citation acknowledged this 18th day of July, 1932.

(Sgd.) ROBERT J. O'NEAL,
Attorney for Louisiana Tax Commission, T. R. Hughes, Sheriff and Ex Officio Tax Collector, and John W. A. Jeter, Assessor.

(Sgd.) A. M. PYBURN,
Attorney for the City of Shreveport, Louisiana.